



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

Produit en collaboration

Produit en collaboration

## NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

## AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

Canada

**TELEVISION BROADCASTING  
AND  
CULTURAL SOVEREIGNTY  
IN GREECE**

**Helen Kariofilli**

Institute of Comparative Law  
McGill University, Montreal  
November 1993

A Thesis submitted to the  
Faculty of Graduate Studies and Research  
in partial fulfillment of the requirements of the degree of  
*Master of Laws*

© Helen Kariofilli 1993



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

*Your file / Votre référence*

*Our file / Notre référence*

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-94556-7

Canada

## ABSTRACT

This thesis makes a proposal for a Greek policy in the area of television broadcasting aimed at ensuring the country's ability to maintain a distinctive position in the European broadcasting market while protecting and promoting Greece's culture and language. The first part of the thesis presents the evolution of Greek legislation on television broadcasting and the status of programming content and quality from 1966, when the first television programme schedule was transmitted, until the present day. The European Community's legal framework and, in particular, the "Television Without Frontiers" Directive is analyzed since any Greek broadcasting policy has to abide by Community law. Reference is also made to the Council of Europe's Convention on Transfrontier Television. Finally, it is suggested that a Greek television broadcasting policy should focus on the formulation of different mandates for the public and private broadcasters, on the reorganization and strengthening of the public broadcaster, on the increase and funding of national cultural broadcasts and Greek language audiovisual works (as defined in the thesis), as well as on high-quality and diversified programming.

## RÉSUMÉ

La présente thèse avance une proposition de politique pour la Grèce qui régit le domaine de la télédiffusion afin que ce pays puisse occuper une position de choix sur le marché européen de la télédiffusion et, à la fois, protéger et promouvoir sa culture et sa langue. La première partie de la thèse fait état de l'évolution de la législation grecque en matière de télédiffusion et se penche sur le contenu de la programmation et la qualité de celle-ci du début des transmissions télévisées en 1966, jusqu'à ce jour. Le cadre législatif de la Communauté européenne et, en particulier, la directive *Télévision sans frontières* font l'objet d'une analyse. En effet, la politique de télédiffusion en Grèce devrait être en conformité avec la législation de la Communauté européenne. Référence est aussi faite à la convention du Conseil européen en matière de télédiffusion outre-frontières. La dernière partie de la thèse énonce une politique pour la Grèce en matière de télédiffusion qui suggère la formulation de divers mandats à l'intention des télédiffuseurs publics et privés, le remaniement et le renforcement de la télédiffusion publique, l'augmentation et le financement d'émissions nationales à caractère culturel et de pièces audio-visuelles réalisées en langue grecque (comme définies dans la thèse), ainsi qu'une haute qualité et une diversification de la programmation.

## ACKNOWLEDGMENTS

I wish to express my gratitude to Professor Richard Janda for his precious and judicious advice and guidance. I also wish to thank Mr. Petros Mays and Mrs. Labrini Georgali from ET-1, Mr. Athanasios Kapamas and Mr. Anastasios Papanastasiou from ET-2, Mr. Anastasios Constantinidis from Mega Channel and Mrs. Maria Barla from Antenna for all the information and help they provided me.

I am also grateful to my friends for their assistance in the collection of material and in the typing of the thesis as well as for their encouragement to complete this work.

## TABLE OF CONTENTS

INTRODUCTION . . . . .	1
<u>CHAPTER 1: TELEVISION BROADCASTING IN GREECE: LAW AND REALITY</u> . . . . .	3
<u>Section A:</u> Television and the Constitution of 1975/86 . . . . .	3
<u>Section B:</u> The Legislative Regulation of Television Broadcasting Until 1975 . . . . .	6
<u>Section C:</u> The Legislative Regulation of Television Broadcasting from 1975 Until 1987 . . . . .	11
<u>Section D:</u> Liberalization of Greek Television . . . . .	31
<u>Section E:</u> The Current Status of Television Broadcasting . . . . .	43
<u>Section F:</u> Conclusion . . . . .	62
<u>CHAPTER 2: THE EUROPEAN LEGAL FRAMEWORK OF TELEVISION BROADCASTING</u> . . . . .	64
<u>Section A:</u> Council Directive 552/89/EEC . . . . .	64
Part I: The Rationale of the Directive . . . . .	64
Part II: The Main Principles of the Directive . . . . .	70
<u>Section B:</u> European Convention on Transfrontier Television . . . . .	88
Part I: Reasons for the Adoption of the Convention - Objectives . . . . .	88
Part II: Transfrontier Transmission and Retransmission of Television Programme Services-Cultural Objectives . . . . .	91
<u>Section C:</u> Action Programmes for the Development of the European Audiovisual Production . . . . .	95
<u>Section D:</u> Implementation of the Directive: The Example of Greece . . . . .	102
<u>Section E:</u> Conclusion . . . . .	107
<u>CHAPTER 3: A PROPOSAL FOR A GREEK TELEVISION BROADCASTING POLICY</u> . . . . .	109
<u>Section A:</u> A Review of the Current Status of Programming on Greek Television . . . . .	109
<u>Section B:</u> Objectives of a Greek Television Broadcasting Policy . . . . .	110

<u>Section C:</u>	Public Broadcasting . . . . .	114
<u>Section D:</u>	Private Broadcasting . . . . .	121
<u>Section E:</u>	Funding Initiatives . . . . .	130
<u>Section F:</u>	The Role of the NCRT . . . . .	137
<u>Section G:</u>	Conclusion . . . . .	140

GENERAL CONCLUSION . . . . .	142
------------------------------	-----

BIBLIOGRAPHY . . . . .	144
------------------------	-----

APPENDIX . . . . .	160
--------------------	-----



## INTRODUCTION

Television should not be regarded simply as one of many means of communication and entertainment, but rather as the most powerful and popular such means. Television influences individual attitudes and, thus, the character of a society. It can shape and spread opinions, ideas, values, and generally life-models. The programmes on television inform, entertain and at the same time express the society and the culture they spring from. Where one society consumes the audiovisual products of another, the values and traditions of one society and culture can change those of another society and culture. This potential makes the role of television very significant. The technological advances in the field of television broadcasting, especially cable and satellite television, have rendered the role of television even more crucial. Television programmes now have no frontiers; their effect is extended beyond national borders. In addition, significant deregulation has taken place in the field of television broadcasting. Private stations have emerged in abundance all over Europe responding to the demands of the market. The European Economic Community, being conscious of that as well as of the fact that American programming has flooded European channels at the expense of European productions, adopted a Directive on transfrontier television. The EC Directive introduces free movement of broadcasts throughout the Community and imposes on broadcasters who operate national networks a quota requirement for European productions. The question raised is how smaller countries, like Greece, with a low production capacity and a restricted language area, will be able to face successfully the new developments in the field of television broadcasting. How will these countries be able to protect and promote their culture and language? Greece now has a mixed system of public and private broadcasters. Television, however, has been used in the past largely as a means of propaganda. Its cultural role has been underestimated by the public broadcaster and virtually ignored by private broadcasters. Foreign productions, particularly American, hold the highest share in certain programme categories on both public and private channels. Consequently, it is essential that Greece reconsider seriously the importance of television's role in protecting and disseminating its culture

and language and create a dynamic and noticeable presence in at least the European broadcasting market. Greece could, thus, contribute to the preservation of the European cultural identity and take advantage of as well as participate in the Community's action programmes regarding television broadcasting. In this thesis, the following issues will be analyzed: firstly, the legal framework of Greek television broadcasting from its origins to the present day in an attempt to show the role that Greek television has traditionally played and the lack of a long-term content policy; secondly, the European Community's legal framework within which any Greek broadcasting policy must function; and thirdly, a proposal for a Greek television broadcasting policy with emphasis on the protection and promotion of the national culture and language.

## CHAPTER 1: TELEVISION BROADCASTING IN GREECE: LAW AND REALITY

### SECTION A: Television and the Constitution of 1975/86

The legislative framework of Greek television begins with the country's Constitution.<sup>1</sup> Greek Constitution of 1975/86,<sup>2</sup> in its Article 15, enacts some general principles which must be followed by any subsequent legislation and provides social and cultural criteria for (radio and) television.<sup>3</sup>

The first paragraph of Article 15 exempts (radio and) television broadcasting from the provisions concerning the protection of the press (Art. 14 of the Constitution), such as the prohibition of censorship. The second paragraph reads as follows:

"Radio and Television shall be under the immediate control of the State, and shall aim at the objective transmission, on equal terms, of information and news reports as well as works of literature and art; the qualitative level of programmes shall be assured in consideration of their social mission and the cultural development of the country."

This provision lays down three general principles: the principle of state control, the principle of objectivity and equality and the principle of quality.<sup>4</sup> Firstly, the

---

<sup>1</sup> The wide spread of television after 1967 and its use by the dictators as a means of propaganda and consolidation of the regime, made the definition of the legal position of radio and television broadcasting necessary, even on a constitutional level. After the overthrowing of the military government, the Greeks dreamt of a new country. (N.K. Alivisatos, *Kratos Kai Radiotileorasi. I Thesmiki Diastasi*, (Athens-Komotini: A. Sakkoula Publications, 1986) at 21). Since any domestic law must be compatible with the Constitution, a constitutional provision for television has been seen as a guarantee.

<sup>2</sup> A.I. Manesis & G. Papademetriou, *To Sydagma tou 1975/86*, (Athens-Komotini: A.N. Sakkoula Publications, 1986).

<sup>3</sup> P.D. Dagtoglou, *Radio-Tileorasi Kai Sydagma*, (Athens: A.N. Sakkoula Publications, 1989) at 14. P. Zeres, "Tileorasi Horis Synora" (1989) 37 Nomiko Vema 692 at 695. E.P. Spiliotopoulos, "Grèce. Le Droit de l'Audiovisuel" (1989) 5:3 Rev. Fr. Droit Adm. 499 at 499.

<sup>4</sup> Dagtoglou, *ibid.* at 14.

principle of immediate state control must not be interpreted as one contrary to impartiality of television. This is also implied by the required principles of objectivity and equality.<sup>5</sup> In addition, "state control" does not mean that television broadcasting necessarily must be organized as a legal entity of public law. It can be a decentralized public service<sup>6</sup> or an independent public authority.<sup>7</sup> "State control" does not also mean the creation of a state monopoly in the field of broadcasting. The constitutional provision neither imposes nor prohibits a state monopoly.<sup>8</sup> The Council of State, in its decision 5040/87, held that the right to establish television stations and to emit programmes is not a civil liberty of any individual within the country. Instead, the legislator is given the discretion to choose either a public monopoly or a system of licences granted to individuals or legal entities of public or private law, who will operate under the direct control of the state. Before any decision is made, the legislator must consider the present circumstances of broadcasting and the principles set out in Article 15(2) of the Constitution.<sup>9</sup>

With respect to programmes, the wording "transmission of information and news reports as well as works of literature and art" is not an exhaustive description of Greek broadcasting. Rather, its meaning is that the Constitution imposes the transmission of these particular types of programmes. Therefore, some programming time must be devoted to them, and some budgetary provision must be made for their preparation and

---

<sup>5</sup> *Ibid.* at 38.

<sup>6</sup> Decentralized public service is a public service which has been given jurisdiction to pursue a certain goal, has its own administrative personnel and its own budget. Nevertheless, the service is a part of the public legal entity of the State to which its assets belong, and its personnel consists of public servants who are subject to the hierarchical control exercised by the government (E.P. Spiliotopoulos, *Deikitiko Dikaio*, (Athens-Komotini: A.N. Sakkoula Publications, 1986) at 230-231).

<sup>7</sup> Dagtoglou, *supra*, note 3 at 40.

<sup>8</sup> Dagtoglou, *supra*, note 3 at 41.

<sup>9</sup> Dagtoglou, *supra*, note 3 at 353-354. Spiliotopoulos, *supra*, note 3 at 499. J. Kiki, "Greek Broadcasting Law: Past and Present" (1989) 10:1 Media Law and Practice 24 at 27.

broadcasting. The above wording, of course, does not exclude the transmission of programmes with different content.<sup>10</sup> Moreover, programmes must be ruled by the principle of objectivity and equality and the principle of quality according to Article 15(2). The state control must aim at and guarantee the fulfilment of these principles.<sup>11</sup> Transmission that is "objective" and "on equal terms" refers to "news and any information broadcasts" as well as to "works of literature and art".<sup>12</sup> Its meaning is, firstly, "complete coverage of all the important events and news", secondly "accurate communication of the real meaning of the broadcasting information" and, thirdly, "neutrality and impartiality".<sup>13</sup> For the qualitative level of programmes the social mission of television and the cultural development of the country must be taken into account. The cultural development of the country varies, and it must be ascertained at a given time.<sup>14</sup> We notice that the constitutional provision of Article 15(2) goes on to introduce the criteria of social mission and cultural development, even though their meaning is not defined.<sup>15</sup> It is made clear, however, that the organization of television should be based mostly on social and cultural objectives instead of economic ones. Therefore the main concern of television activities should not be economic.<sup>16</sup>

Finally it must be stressed that Article 15(2) does not simply set out some general principles which must be respected by television broadcasters and be guaranteed by the

---

<sup>10</sup> Dagtoglou, *supra*, note 3 at 42.

<sup>11</sup> Dagtoglou, *supra*, note 3 at 43.

<sup>12</sup> *Ibid.*

<sup>13</sup> Greek Parliament, *Report on the Bill: "The Establishment of a National Council of Radio and Television and the Grant of Licences for the Installation and Operation of Television Stations"*, Parliament Archives, Period E, Session A, from 3-7-1989 to 12-10-1989, at 4-5.

<sup>14</sup> Dagtoglou, *supra*, note 3 at 45.

<sup>15</sup> G.I. Krippas, *To Nomiko Kathestos tis Radiotileoptikis Epihirisis*, (Athens: A.N. Sakkoula Publications, 1990) at 125, 128.

<sup>16</sup> Zeres, *supra*, note 3 at 695.

state control. It also assigns to the Greek state the obligation to create an organizational framework which would make attainable or would facilitate the realization of these principles.<sup>17</sup>

## SECTION B: The Legislative Regulation of Television Broadcasting Until 1975

The first Greek television station, operated by the Public Electricity Corporation (D.E.I.), commenced broadcasting in 1960, at the International Fair of Thessaloniki (an annual September affair) in order to advertise the fair's exhibited products. It was a three-hour programme emitted at the area of Thessaloniki. After one year and few months the same station broadcast in Athens. A few days after, however, it was forced to cease its transmissions. Its operation was illegal since the Constitutional Act 54/15.6.45 had created the National Radio Foundation (EIR) and entrusted it exclusively with the task of broadcasting. In 1965, EIR transmitted its first experimental broadcasts and in 1966 broadcast its first scheduled television programme.<sup>18</sup>

Until 1975, television was regulated by the legislation concerning radio broadcasting, namely, Act 2312/1953<sup>19</sup> as amended by Act 3188/1955<sup>20</sup> and by

---

<sup>17</sup> Dagtoglou, *supra*, note 3 at 45.

<sup>18</sup> G.N. Carter, *Istorika tis Tileorasis*, (Athens: Techniki Eclogi Publications, 1979) at 13-16. The slow and belated development of Greek television can be ascribed to the following facts: firstly, the development of Greek radio took a long time and that delayed the subsequent organization of a television network, which required a significant amount of preparation and planning. Secondly, there were many cinemas in Greece which employed large sections of the work force in distribution and servicing. It required a courageous political will to deflate such a prosperous sector. In addition, to the press lobby, television was a powerful new competitor. Thirdly, the difficulty and the expense of covering the country's mountainous area and isolated islands with transmitters also contributed to the slow spread of television in Greece. Finally, in a period when Greece was carefully trying to maintain its relations with various European countries, to choose the company responsible for installing a television network was not an easy task. (D. Katsoudas, "Greece: A Politically Controlled State Monopoly Broadcast System" (1985) 8:2 West European Politics 137 at 140 and S. Papathanassopoulos, "Greece: Nothing is More Permanent than the Provisional" (1989) 17:2 Intermedia 29 at 30-31).

<sup>19</sup> Act no 2312 of 10/11 March 1953, (1953) Code of Nomiko Vema, 113.

<sup>20</sup> Act no 3188 of 13/21 April 1955, (1955) Code of Nomiko Vema, 281.

Legislative Decree 3778/1957,<sup>21</sup> and Legislative Decree 745/1970<sup>22</sup> as amended by Legislative Decree 352/1974.<sup>23</sup>

Legislative Decree 745/1970 changed the name of the state broadcasting authority from EIR (National Radio Foundation) to EIRT (National Radio and Television Foundation),<sup>24</sup> and stated that until the enactment of new decrees, EIRT would be governed by the legislation concerning radio broadcasting which was at that time in force.<sup>25</sup> Moreover, the term "radio broadcasting" included the transmission of television programmes.<sup>26</sup>

EIRT, which operated the first nation-wide television channel,<sup>27</sup> was, like EIR, a legal entity of public law.<sup>28</sup> Its activities were under direct state control, which was particularly exercised by the Minister of the Government Presidency.<sup>29</sup> EIRT had the monopoly in the field of radio and television broadcasting,<sup>30</sup> and its administrative structure supported and expanded the power of the government.<sup>31</sup> The administrative

---

<sup>21</sup> *Legislative Decree no 3778 of 11/12 October 1957*, (1957) Code of Nomiko Vema, 508.

<sup>22</sup> *Legislative Decree no 745*, Hellenic Kingdom Gazette, 10 December 1970, Fasc. A, No. 265.

<sup>23</sup> *Legislative Decree no 352 of 22/22.3.1974*, (1974) Code of Nomiko Vema, 173.

<sup>24</sup> *Supra*, note 22, art. 1(1).

<sup>25</sup> *Supra*, note 22, art. 5.

<sup>26</sup> *Supra*, note 19, art. 2(2) and *Supra*, note 20, art. 1(2).

<sup>27</sup> S. Papthanassopoulos, "Greece: Nothing is More Permanent than the Provisional" (1989) 17:2 *Intermedia* 29 at 30.

<sup>28</sup> Dagoglou, *supra*, note 3 at 21-22.

<sup>29</sup> *Supra*, note 19, art. 1(3). The "Minister of the Government Presidency", as opposed for example to the Minister of Foreign Affairs, has a variety of cabinet responsibilities including broadcasting.

<sup>30</sup> *Supra*, note 19, art. 2(1).

<sup>31</sup> E. Noam, *Television in Europe*, (New York - Oxford: Oxford University Press, 1991) at 268.

bodies (a Director-General and a board of governors) were appointed, in their largest part directly or indirectly, by the government.<sup>32</sup> The responsible Minister had also the right to dismiss members of the board of governors.<sup>33</sup> The powers of the board of governors were confined to matters of an economic nature and to the appointment of the personnel, while the matters regarding programmes fell within the competence of the Director-General.<sup>34</sup>

The only exception to the monopoly of EIRT was the military broadcasting channel, YENED (Information Service of the Armed Forces). The Armed Forces initially established a television station in 1965.<sup>35</sup> The establishment of a military television station was in the beginning based on Act 1663/1951, which allowed the Armed Forces "to establish radio or television stations... with the purpose of informing, instructing, entertaining and generally raising the educational level of the Armed Forces and, in wartime, of strengthening the morale of the nation at war."<sup>36</sup> Act 1663/1951 was abolished and replaced during the Colonels' dictatorship by the Legislative Decree 722/1970, which established the Information Service of the Armed Forces (YENED).<sup>37</sup> YENED was "under the command of the Chief of Staff of the Armed Forces" and its aim was, *inter alia*, "the national, moral and social education as well as the information and entertainment of, primarily, the armed forces and the public at large."<sup>38</sup> According to

---

<sup>32</sup> *Supra*, note 19, arts 6 and 8. *Supra*, note 20, arts 2(3) and 4(1), and *supra*, note 21, arts 3 and 4.

<sup>33</sup> *Supra*, note 19, art. 6(8) and *Supra*, note 21, art. 3(15).

<sup>34</sup> Dagoglou, *supra*, note 3 at 26.

<sup>35</sup> D. Payanote & T. Doukeri, "Electronic Media Policy in Greece" in H.J. Kleinsteumber, D. McQuail & K. Siune, eds, *Electronic Media and Politics in Europe*, (Frankfurt - New York: Campus Verlag, 1986) at 138.

<sup>36</sup> Dagoglou, *supra*, note 3 at 31, and *ibid.* at 137.

<sup>37</sup> D. Katsoudas, "Greece: A Politically Controlled State Monopoly Broadcasting System" (1985) 8:2 *West European Politics* 137 at 138.

<sup>38</sup> *Legislative Decree no 722*, Hellenic Kingdom Gazette, 24 November 1970, Fasc. A, No. 252, arts 1(1) and 1(2) (β).



Article 1(3) of Legislative Decree 722/1970, in order to achieve its aim, YENED could establish radio and television stations. Subsequently, the military replaced its primitive television station with a nation-wide network called YENED as well.<sup>39</sup>

With respect to programmes, the Prime Minister's decision 10627/1606 of 1972 provided for the establishment of a Commission with the purpose of determining a general policy regarding the radio and television programmes of EIRT and YENED, taking into consideration "the cultural, social, national demands and generally those of the state."<sup>40</sup> Moreover, the administrative structure of the military Information Service, which was confirmed by Presidential Decree 300/1974, embraced an Office of Programmes and an Office of Television.<sup>41</sup> Both offices dealt with programming.<sup>42</sup> For example, the competencies of the Office of Programmes included, inter alia, the settling of general principles regarding all programme categories and their apportionment in the programming time,<sup>43</sup> the proposal of measures for the improvement of programmes,<sup>44</sup> cooperation with domestic and foreign organizations for the supply of television programmes.<sup>45</sup> However, the result of all these legislative provisions was rather disappointing. In order to understand the nature of television until 1975, it must be explained that television was actually developed during the Colonels' dictatorship (1967-1974), because what followed the broadcasting of the first regular television programme (in 1966) was a four-year dictatorial period. That fact strongly influenced

---

<sup>39</sup> *Supra*, note 27 at 30.

<sup>40</sup> Dagtoglou, *supra*, note 3 at 30.

<sup>41</sup> *Presidential Decree no 300*, Hellenic Republic Gazette, 30 April 1974, Fasc. A, No. 114, art. 3(2)(β).

<sup>42</sup> *Ibid.* arts 14 and 16.

<sup>43</sup> *Ibid.* art. 14(2)(β)

<sup>44</sup> *Ibid.* art. 14(2)(γ).

<sup>45</sup> *Ibid.* art. 14(1)(ε).

the character of broadcasting.<sup>46</sup> Both EIRT and YENED were controlled by the military and played a dominant role in portraying the dictatorship favourably.<sup>47</sup> Moreover, in general there was no marked effort to develop a new challenging form of cultural expression and diversity. As Dimitrios Katsoudas explains, "broadcasting during the dictatorial period created a certain type of undemanding audience: culturally, popular taste was flattered rather than improved."<sup>48</sup> Football and bouzouki music was almost constantly broadcast, while the films that were favoured by the Colonels' Junta were of low quality.<sup>49</sup> YENED, in particular, successfully won viewers, despite its lower-quality programming and the fact that it lacked the technical means and to some extent the money to progress.<sup>50</sup> The reason for YENED's popularity was that, in order to attract audiences and maintain its revenues from advertising, it followed the practice of commercial channels in other countries. It therefore had a programming policy, while EIRT had none. EIRT's programmes were well-intended but "colourless".<sup>51</sup> YENED broadcast mostly US films and soap operas.<sup>52</sup> No commercially successful American series had been ignored by YENED.<sup>53</sup> It also showed many popular Greek series and films which were rather low-budget and their scenarios were characterized by a lack of originality.<sup>54</sup> Only after 1975, YENED became more "radical", "progressive" and

---

<sup>46</sup> *Supra*, note 27 at 29.

<sup>47</sup> *Supra*, note 37 at 141. *Supra*, note 27 at 31.

<sup>48</sup> *Supra*, note 37 at 141.

<sup>49</sup> *Supra*, note 37 at 141, 143.

<sup>50</sup> *Supra*, note 37 at 146.

<sup>51</sup> *Supra*, note 37 at 147. R. Manthoulis, *To Kratos tis Tileorasis*, (Athens: Themelio Publications, 1981) at 65.

<sup>52</sup> *Supra*, note 27 at 32. Manthoulis, *Ibid*.

<sup>53</sup> *Supra*, note 37 at 147. Manthoulis, *supra*, note 51.

<sup>54</sup> *Supra*, note 27 at 32. Manthoulis, *supra*, note 51.

"culturally minded", because ERT (EIRT was renamed to ERT) improved its programming and therefore competition could be developed.<sup>55</sup>

In conclusion, until 1975, what characterized Greek television was tight governmental control, which reached its apotheosis during the dictatorial period, and low-quality programmes. It also appears that foreign productions filled a large part of the programming time, while the domestic broadcasts were not very culturally conscious.

### **SECTION C: The Legislative Regulation of Television Broadcasting from 1975 Until 1987**

In 1975, the Greek government, determined to enact a new statute on television broadcasting, asked Sir Hugh Greene, the former director-general of the BBC, to submit an advisory report.<sup>56</sup> Others, such as Alan Protheroe of the BBC News Service, Joan Spicer of the British Television Institute and Felix Haydenberger of the Bavarian Television, were also asked to submit their own reports.<sup>57</sup>

Sir Hugh Greene studied the situation carefully. What characterized EIRT at that time was a bad financial situation, an inefficient and bureaucratic administrative structure, technological backwardness and a lack of well-trained professional personnel.<sup>58</sup> Greene suggested that EIRT be transformed from a state enterprise into an organization directed by the state but operating as a private limited company. That, among other things, would psychologically motivate the employees to put their best efforts into their work.<sup>59</sup> He also proposed a pluralist administrative structure which

---

<sup>55</sup> *Supra*, note 37 at 147.

<sup>56</sup> *Supra*, note 37 at 142.

<sup>57</sup> *Supra*, note 37 at 142-143.

<sup>58</sup> *Supra*, note 37 at 143.

<sup>59</sup> *Ibid.*

would be as free as possible from immediate state intervention. In particular, he suggested: a fifty-member advisory body consisting of representatives from political parties, local government, the Church of Greece, the press, students' unions, several free professions, etc. - the catalogue being non-exclusive; a board of governors consisting of six members and a chairman, all of them appointed after consultations with the leader of the opposition; a director-general who would be appointed by the board of governors and not by the government; YENED's absorption by EIRT so that only one organization would exist including both TV channels.<sup>60</sup> Moreover, Sir Hugh Greene proposed the introduction of extensive educational programmes, the improvement of cultural ones and the "Hellenization" of the programme output.<sup>61</sup>

In responding to the Report, the government could not resist the temptation to continue the long tradition of state control over broadcasting and use of television as its means of propaganda. Nevertheless, it could not completely ignore Sir Hugh's report, since the press and the public had responded to it enthusiastically.<sup>62</sup> Consequently, Act 230/1975<sup>63</sup> was enacted incorporating some of Sir Hugh's proposals.<sup>64</sup> Under the new law EIRT was renamed to ERT (Greek Radio and Television) and was transformed into a legal entity of private law, in the form of a limited company.<sup>65</sup> It was controlled and owned by the state<sup>66</sup> - the Greek state being its only shareholder.<sup>67</sup> The law provided that ERT had the monopoly on radio and television broadcasting with the exception of

---

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Act no 230*, Hellenic Republic Gazette, 3 December 1975, Fasc. A, No. 272.

<sup>64</sup> *Supra*, note 37 at 144.

<sup>65</sup> *Supra*, note 63, arts 1(1) and 2(1).

<sup>66</sup> *Supra*, note 63, art. 2(1).

<sup>67</sup> *Supra*, note 63, art. 7(2).

YENED.<sup>68</sup> which was to be merged with ERT within two years "if the necessary financial, technical and organizational conditions prevail."<sup>69</sup>

Furthermore, Act 230/1975 established three basic administrative units: a Director-General, a board of governors and a General Assembly.<sup>70</sup> However, in its essential elements Sir Hugh's report was ignored. In particular, it was not implemented with respect to ERT's independence from the government. Most of the power was concentrated in the hands of the Director-General, who, along with his assistants, was directly appointed for a period of three years and also subject to dismissal if there was such a case according to the provisions of the private law, following the decision of the Council of Ministers.<sup>71</sup> Although the position of Director-General and that of the assistants required personalities who were "well known and capable of contributing to ERT's aims through their special knowledge and experience",<sup>72</sup> the government would choose a candidate who would best serve its interests. Besides, only few personalities possessed the necessary expertise.<sup>73</sup> The board of governors consisted of seven members appointed by the government for a three-year term.<sup>74</sup> Their qualifications were as vaguely defined as were those of the Director-General and his assistants, and often their knowledge of ERT's affairs was obtained through the Director-General's reports.<sup>75</sup> The board of governors could not elect its own chairman and vice-chairman.

---

<sup>68</sup> *Supra*, note 63, art. 1(2) and 4(1).

<sup>69</sup> *Supra*, note 63, art. 4(4).

<sup>70</sup> *Supra*, note 63, arts. 10, 12 and 13.

<sup>71</sup> *Supra*, note 37 at 144. *Supra*, note 63, arts. 12(2)(4)(5).

<sup>72</sup> *Supra*, note 63, art. 12(3).

<sup>73</sup> *Supra*, note 27 at 32.

<sup>74</sup> *Supra*, note 63, arts 10(2) and (5).

<sup>75</sup> *Supra*, note 37 at 146. *Supra*, note 63, art. 10(2).

They were appointed by the government,<sup>76</sup> which also had the right to replace the board members before the end of their term.<sup>77</sup> All the appointments were directly controlled by the government in the sense that no appointee could act contrary to the government's will and hope to maintain his position. The Director-General especially was at the absolute mercy of the government since the law had conferred on him great powers.<sup>78</sup> The three year office term also facilitated this governmental policy. The third administrative unit, a twenty-member General Assembly, consisted of top civil servants - the Director of the Bank of Greece, the President of Athens Academy, Deans of Universities, and the President of the Legal Council of State<sup>79</sup> -, three appointees of the Prime Minister, three appointees of the Opposition leader,<sup>80</sup> the Director of Communications of the Armed Forces,<sup>81</sup> and the General Director of some ministries.<sup>82</sup> It actually consisted of governmental representatives and had limited, mostly formal, powers.<sup>83</sup> One of its powers was "to express its view on ERT's policy in general, on its programme and on the output of its entire activities".<sup>84</sup> The issue of a policy regarding television programmes fell within the competence of the Director-

---

<sup>76</sup> *Supra*, note 63, art. 10(2).

<sup>77</sup> *Supra*, note 63, art. 10(6).

<sup>78</sup> *Supra*, note 37 at 145.

For example, P. Bakoyannis, the first director-general (after the overthrowing of the military government), resigned a few months before a general election (in November 1974) after a disagreement with the government concerning the television coverage of those elections. (D. Katsoudas, "Greece: A Politically Controlled state Monopoly Broadcast System" (1985) 8:2 West European Politics 137 at 151, note 19).

<sup>79</sup> *Supra*, note 63, art. 13(1) (α)-(στ).

<sup>80</sup> *Supra*, note 63, art. 13(1) (ζ)-(ιβ).

<sup>81</sup> *Supra*, note 63, art. 13(1) (Κ).

<sup>82</sup> *Supra*, note 63, art. 13(1) (ιγ -ιε).

<sup>83</sup> *Supra*, note 37 at 144.

<sup>84</sup> *Supra*, note 63, art. 14 (ε).

General and his assistants.<sup>85</sup> In addition, the Minister of the Government Presidency, who supervised ERT, could, under special circumstances and by issuing written instructions, cancel or postpone a broadcast, in part or in full.<sup>86</sup>

The Director-General and his assistants as well as the members of the board of governors had the duty "to contribute effectively to the achievement of ERT's aim".<sup>87</sup> According to Article 3(1) of Act 230/1975, ERT's aim was to "inform, educate, and entertain the Greek people". In the second paragraph of the same provision we read: "The broadcasts of ERT shall be permeated by the democratic spirit, *a consciousness of cultural responsibility*, humanism and objectivity, and *they shall be adjusted to Greek reality*". [Emphasis added]. The phrase "a consciousness of cultural responsibility" leads one to conclude that ERT should include in its programming-time broadcasts which depict and maintain the Greek culture. The wording "[ERT's broadcasts] shall be adjusted to Greek reality", however, seems to be vague. Does it mean that television broadcasts should reflect the Greek lifestyle, and therefore ERT should move towards a policy of "Hellenizing" the programme output as Sir Hugh Greene suggested, or does it provide an excuse for not abiding by the letter of the law?<sup>88</sup> In the latter case, ERT could have a "reason" to avoid or postpone the increase in national production by invoking technological or financial difficulties, as part of "Greek reality". There is no doubt that Act 230/1975 catered for a general principle which reminded ERT that national culture was its responsibility as well. It did not, however, contain any other provisions setting out specific requirements concerning Greek content programmes, such as quotas. In general, it seems that the Greek government did not adopt any policy on the matter and showed no fundamental interest in organizing and changing radically the

---

<sup>85</sup> *Ibid.* art. 12(1).

<sup>86</sup> *Ibid.* art. 5(1) (γ). The law did not define the circumstances under which the Minister can use this discretion.

<sup>87</sup> *Ibid.* art. 10(2) and 12(3).

<sup>88</sup> *Supra*, note 37 at 145.

image of Greek television. ERT, however, following a non-commercial television broadcasting policy, aimed at improving its programming.<sup>89</sup> The improvement was rather slight but appreciable since it increased ERT's audience share about 40% and forced YENED - whose audience share was reduced about 25% - to improve its programming as well.<sup>90</sup> In particular, ERT decreased by about 50% the number of serials - domestic and foreign - which, until then, had inundated Greek television. In addition, most of the peak viewing time (evening hours) was devoted to cultural content broadcasts. Documentaries, art programmes, theatrical performances, talk shows and reportages covered a large part of this viewing time instead of demagogic and melodramatic shows. For the first time live broadcasts were shown on Greek television - in 1976, there were only two - and Greek viewers had the chance to watch some of the best productions of European television<sup>91</sup>. Moreover, ERT interpreted the wording of the law "[ERT's broadcasts] shall be adjusted to Greek reality" as meaning that the programming of Greek television should be mostly Greek, and raised the percentage of Greek broadcasts from 60% to 70%.<sup>92</sup> However, despite all those efforts, Greek television was still blamed for being politically sympathetic to the government of the day and for lacking organization. It was also criticized for its few and anti-pedagogic children's programmes, its low-budget cultural and information broadcasts and for the fact that the good quality programmes were few and far between.<sup>93</sup>

Finally, according to Article 8 of Act 230/1975, every Greek household, whether it possessed a TV set or not, had to pay a TV fee, collected by D.E.I. (Public Electricity

---

<sup>89</sup> Manthoulis, *supra*, note 51 at 85.

<sup>90</sup> Manthoulis, *supra*, note 51 at 72-74.

<sup>91</sup> Manthoulis, *supra*, note 51 at 71, 84-85.

<sup>92</sup> Manthoulis, *supra*, note 51 at 97.

<sup>93</sup> S.E. Spyridis, *Skepseis Kai Schedia Giro apo tin Elliniki Tileorasi*, (Athens: privately printed, 1976) at 11-12, 19.



Corporation) through the electricity bill.<sup>94</sup> ERT's income was also derived from advertisements and from the national budget.<sup>95</sup>

The foregoing described the legal state of television broadcasting until 1982, when the socialist government enacted Act 1288.<sup>96</sup> Under the new law, the military broadcasting service, YENED, was renamed ERT-2 and transformed into a decentralised public service of the ministry of the Government Presidency, which controlled its operation.<sup>97</sup> Consequently, it became a civilian broadcasting service, owned by the state, but it did not merge with ERT as it has been suggested by Sir Hugh Greene and was provided by article 4(4) of Act 230/1975. The Law vaguely stated that YENED was to be merged with ERT "if the necessary financial, technical and organizational conditions prevail". It can be said that these conditions did not ultimately prevail. Generally, however, the government was indifferent to this matter and did not make even one step towards the merger of the two channels<sup>98</sup>. Also there was not the disposition for the necessary action. The Minister of National Defence assured his personnel that "YENED was not going to be sacrificed to ERT'S reform".<sup>99</sup>

The powers of the Commander and Deputy Commander of YENED were transferred to ERT-2's board of governors.<sup>100</sup> The board of governors consisted of five members appointed by the Minister of the Government Presidency.<sup>101</sup> Its chairman

---

<sup>94</sup> *Supra*, note 63, art. 8(1) and (2).

<sup>95</sup> *Ibid.* art. 8(4).

<sup>96</sup> *Act no 1288*, Hellenic Republic Gazette, 1 October 1982, Fasc. A, No 120.

<sup>97</sup> *Ibid.* art. 15(1).

<sup>98</sup> *Supra*, note 93 at 5.

<sup>99</sup> *Supra*, note 93 at 6.

<sup>100</sup> *Supra*, note 96, art. 15(2).

<sup>101</sup> *Ibid.*

concentrated all the powers and directed ERT-2 as if he were its Director-General.<sup>102</sup> In accordance with Article 16(3) of Act 1288/1982, YENED's organization, which was ratified by Presidential Decree 300/1974,<sup>103</sup> was still in force and was to be applied to ERT-2 until it was replaced.

ERT-2's income was derived almost exclusively from advertising. It did not benefit from any fee received through the electricity bill or any other source.<sup>104</sup>

Finally, it must also be mentioned that Act 1288/1982 renamed ERT to ERT-1,<sup>105</sup> and that it gave no right to any individual or private legal entity to transmit television broadcasts. Act 1288/1982 only altered, in part, the legal structure of television broadcasting services showing no concern for programme content with the exception of article 20(3). According to this provision, ERT-2 had the same aim as ERT, and its broadcasts should be governed by the same principles applicable to ERT's broadcasts under Article 3(1) of Act 230/1975 (as discussed above).

Until 1987, Greece had two public television broadcasting services, ERT-1 and ERT-2, governed by Acts 230/1975 and 1288/1982 correspondingly. The policy of the socialist government (PASOK), did not differ from that of the conservatives as regards state control over the media.<sup>106</sup> Greek television was criticized as still being obsequious to the government. However, it became more liberal in the sense that the

---

<sup>102</sup> *Supra*, note 35 at 140.

<sup>103</sup> *Supra*, note 41.

<sup>104</sup> *Supra*, note 35 at 140.

<sup>105</sup> *Supra*, note 96, art. 15(1).

<sup>106</sup> *Supra*, note 27 at 34.

opposition was given more air time than it had before, especially during electoral periods.<sup>107</sup>

Nevertheless, as regards the content of television programmes, the socialists (PASOK), unlike the conservatives, did show concern. In particular they decided to change the source of the programmes.<sup>108</sup> As a consequence, the percentage of Greek productions was increased, and foreign productions were diversified moving away from their pronounced American character. PASOK wished to protect Greek culture from the influence of the American culture.<sup>109</sup> Mr. Papandreou, the leader of PASOK and Prime Minister at that time, once stated: "A levelling consumerist model has invaded our country and (...) threatens to transform us into a cultural colony (...). The main vehicle of that invasion is the mass media (...). They have created the well-known culture: the culture of exhibition and of leisure pleasure, based on acceptance and not on critical thinking. It is a pompous, parasitic, faked, tasteless, standardised subculture created with the least common denominator as a criterion (...). It threatens our physiognomy, our specificity, our heritage, our very existence (...). Our traditional popular culture, with its fighting resistance character is (...) our aggressive confrontation with the imported capitalist model."<sup>110</sup> The most typical example of programmes in that category was the American popular serial "Dynasty".<sup>111</sup> In the summer of 1984, ERT-2's board of governors advised against the purchase of new episodes with the purpose to protect the "culturally less developed audience". It was held by the board of governors that "with the direct and indirect publicity and its movie style, "Dynasty", which so perfectly uses the known methods of aesthetic and ideological deception of the

---

<sup>107</sup> *Supra*, note 31 at 269.

<sup>108</sup> *Supra*, note 35 at 143.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.* at 143-144.

<sup>111</sup> *Ibid.* at 144.

culturally less developed parts of the public, succeeded in rating above ERT-2 programmes".<sup>112</sup> Even though the new episodes were bought in the end, other American programmes of that type were rejected for similar reasons.<sup>113</sup>

The new programme policy just described had mixed results. The quality of Greek productions was disappointing despite the fact that they were generously subsidized by ERT's budget. On the contrary, the diversification of foreign programmes shown (not necessarily American), particularly the increase in high quality movies, contributed significantly to the overall improvement of the diversity and quality of television programmes. Even the opposition press admitted that the image of Greek television was improved by well selected foreign programmes.<sup>114</sup> Likewise, in spite of the government's will to preserve the national culture, foreign programmes constituted 3 out of 4 programmes on Greek television. The problem of Greek content programmes continued to exist.<sup>115</sup> The Government failed to adopt particular measures which would effectively promote the national television broadcasting production and would maintain and enrich the Greek culture. In 1983, in a meeting that occurred in the presence of the Minister of Cultural Affairs, Melina Mercouri, the establishment of production studios for ERT-1 was decided. ETBA (Greek Bank of Industrial Development) would supply with a loan of two billion drachmas and the under-secretary's office of Nea Genia (New Generation) with a real estate of one thousand stremmata<sup>116</sup> (1.000.000 sq.m.). That would expand substantially ERT-1's capacity to produce its own television programmes and would facilitate their exportation. Unfortunately, the said decision was never

---

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> S. Kouloglou, "To Syndromo tis 'Ideologikis Dropis' " (1986) *Adie*, No. 318, 36 at 37.

<sup>116</sup> One stremma is 1000m<sup>2</sup> (about ¼ of an acre).

implemented. Instead, we remained with some private producers of, in general, low quality.<sup>117</sup>

Furthermore, the government's protectionist attitude affected its decisions on satellite and cable television. At the end of 1984, it refused to participate in the Olympus (now Europa) European television satellite programmes, adding that it also opposed the idea of cable or private television.<sup>118</sup> In accordance with the report that explained the above choice: "If we had said yes, a large number of viewers would have avoided ERT's and ERT-2's programmes. Secondly, the decisions on programmes to be broadcast would have been taken by majority vote and would not have been unanimous. Thus, we would have been forced to accept the Community's programmes without the possibility of imposing a veto. Thirdly, there would be a danger of alienation of our national identity, especially because of the qualitatively better programmes from the pool of other countries, that would project a European mentality."<sup>119</sup> The government tried to keep the country out of European satellite programmes in order to protect it culturally, while foreign programmes, the majority of which were qualitatively better than domestic programmes, dominated Greek television channels. After two years, however, the Greek government realized that the country's entry into the satellite television system was inevitable and decided to start negotiations for its participation in the "Olympus" satellite programmes.<sup>120</sup> Later, in May 1988, an agreement was concluded between the Greek public broadcasting organization, ERT-AE, (it was established by Act 1730/1987) and EUTESALT (a European satellite programme) for the country's joining in that programme.<sup>121</sup>

---

<sup>117</sup> *Supra*, note 115 at 36.

<sup>118</sup> *Supra*, note 35 at 144-145.

<sup>119</sup> *Ibid.* at 145.

<sup>120</sup> "I Idiotiki Tileorasi Efthase Kai stin Ellada" (1986) *Adie*, No 318, 27 at 27.

<sup>121</sup> *Kiki, supra*, note 9 at 24.

Before we discuss the change of television broadcasting status initiated by Act 1730/1987, I consider it useful to refer to some data on Greek television in order to give a better idea of the profile of ERT-1 and ERT-2 up to 1986 and to exemplify the problem with domestic content programmes.

To begin with, it should be taken into account that in 1982 93.5% of the Greek households possessed a TV set compared to 46.6% in 1974.<sup>122</sup> Also, in 1985, only 2% of adults did not watch television, while in 1978 the proportion was 11%.<sup>123</sup> In the same year (1985) it was estimated that the average time spent by adults watching TV was three hours daily.<sup>124</sup>

Next, I will cite some results of a research on television programmes conducted by Mr. Christos Lazos during the week of March 15-21 1986, which were published in the Greek periodical, *Adie*, in 1986. Mr. Lazos divided the programmes of the sample week into the following categories: a) news/information broadcasts, b) education/culture, c) entertainment, and d) children's programmes.<sup>125</sup> According to his research, educational and cultural broadcasts and the majority of the information broadcasts were scheduled from 2 p.m. to 7 p.m., a period of time during which only a 5 to 13% of the viewers watch television (according to the figures provided by A.C. Nielsen).<sup>126</sup> Moreover, ERT-2 devoted more time than ERT-1 to broadcasts concerning the Greek cultural tradition. In particular, in the sample week, these broadcasts covered 200 minutes of

---

<sup>122</sup> M. Heretakis, "I Deisdisi tis TV stin Ellada Kai to Kino tis" (1986) *Adie*, No. 138, 29 at 29.

<sup>123</sup> *Ibid.* at 29-30.

<sup>124</sup> *Ibid.* at 31, footnote 2.

<sup>125</sup> C. Lazos, "Programmatismos Kai Exousia stin Elliniki Tileorasi: To Avevaion Mellon ton Kratikon Kanalion" (1986) *Adie*, No. 318, 32 at 33.

<sup>126</sup> *Ibid.* at 33.

ERT-2's programming time and 175 of ERT-1's.<sup>127</sup> This, however, does not necessarily mean that ERT-2 showed a special concern on that programme category or that it had adopted a cultural policy.<sup>128</sup> ERT-2's programming was rather commercial since it contained mostly entertainment broadcasts and sports events.<sup>129</sup> It was also noted that ERT-1's programming was qualitatively better than that of ERT-2. The movies shown on ERT-1 were selected under stricter criteria.<sup>130</sup> Finally, entertainment broadcasts held the highest percentage of the programming time on both channels.<sup>131</sup>

With respect to the matter of domestic and foreign content programmes of the two television channels, in the total of the programmes, we have the following proportions: ERT-1 included 60% Greek content programmes and 40% foreign content ones and ERT-2, 54% Greek content and 46% foreign content programmes.<sup>132</sup> At first sight, the results are not worrisome. Indeed, in accordance with ERT-1's reports, its policy had been the increase of Greek content programmes as well as of those in Greek and the reduction of the foreign ones.<sup>133</sup> In 1985, we had the following proportions: Greek content programmes 66.3%, foreign programmes 24.8%, and dubbed ones 8.9%. Therefore, the percentage of the programmes in Greek was 75.2%.<sup>134</sup> In 1986, there was a small increase in Greek content programmes, namely, their percentage was 68.9%. Adding the 12% of dubbed programmes, the programmes in Greek amounted to 76.9%

---

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> *Supra*, note 125 at 34.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Supra*, note 125 at 33.

<sup>132</sup> *Ibid.* at 35.

<sup>133</sup> Greek Radio - Television (ERT) - Office of Television - Vice-Office of Programmes, *Report 1985*, at 2.

<sup>134</sup> *Ibid.* at 1.

of the programming time.<sup>135</sup> In the same year, the percentage of the foreign programmes was 31.1.<sup>136</sup> If, however, we look at the percentage of programming time covered by various programme categories, we will obtain a different picture of the national television channels. It must be taken into consideration that news and current affairs or other information broadcasts as well as sports events are virtually all of domestic origin. Therefore, these programme categories increase the portion of domestic content programmes without changing the result - that is dominance of foreign productions and cultural dependence. The following table<sup>137</sup> produced by Mr. Lazos is illustrative:

	ERT-1		ERT-2	
	Greek	Foreign	Greek	Foreign
Children's programmes	42.57	57.43	32.73	67.27
Series	17.05	82.95	12.24	87.76
Cinema films	25.50	74.50	29.75	70.25
Entertainment broadcasts	68.47	31.53	56.52	43.48

The dominance of foreign programmes in the first three categories, which actually have a large audience share<sup>138</sup> is obvious. Moreover, the channels themselves could hardly produce more than one third of the domestic programmes.<sup>139</sup>

---

<sup>135</sup> Greek Radio - Television (ERT) - Office of Television - Vice-Office of Programmes, *Report 1986*, at 2.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Supra*, note 125 at 35.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*



That was the situation of Greek television in 1986, when cable and satellite television was a reality in Europe, and the European Community had started to discuss the creation of a common market on television broadcasting.

In 1987, the Greek government enacted Act 1730/1987.<sup>140</sup> After a lot of theoretical and political debates on the idea of establishing private or commercial radio and television,<sup>141</sup> the new legislation allowed the establishment only of private radio stations.<sup>142</sup> Act 1730/1987 established ERT-AE (Greek Radio and Television Ltd.), a legal entity of private law in the form of a limited company.<sup>143</sup> ERT-AE functions as a public enterprise.<sup>144</sup> It is controlled by the state and particularly by the Minister of the Government Presidency.<sup>145</sup> The two public channels, ERT-1 and ERT-2, merged into ERT-AE and were renamed ET-1 (Greek Television 1) and ET-2 (Greek Television 2) respectively.<sup>146</sup> The intention was to create one public television broadcasting service with two channels and to enact one law which would govern both public channels. The only alternative that the new law offers, as far as television is concerned, is that it entitles the government, if it so decides, to establish a third public channel, ET-3 (Greek Television 3).<sup>147</sup>

---

<sup>140</sup> Act no 1730, Hellenic Republic Gazette, 18 August 1987, Fasc. A, No. 145.

<sup>141</sup> Kiki, *supra*, note 9 at 26.

<sup>142</sup> *Supra*, note 140, art. 2(4).

<sup>143</sup> *Supra*, note 140, arts 1(1), (2).

<sup>144</sup> *Supra*, note 140, art. 1(3).

<sup>145</sup> *Supra*, note 140, arts 1(3) and 8(1).

<sup>146</sup> *Supra*, note 140, art. 1(4).

<sup>147</sup> *Supra*, note 140, art. 1(5). Kiki, *supra*, note 9 at 26. This was subsequently done, as is discussed below.

The purpose of ERT-AE is "the organization, exploitation and development of radio and television broadcasting and its contribution, via these media, to a) information, b) education, and c) entertainment of the Greek people."<sup>148</sup> In addition, it is stated that ERT-AE has the monopoly in the field of television broadcasting.<sup>149</sup>

ERT-AE is governed by a seven-member board of governors,<sup>150</sup> whose service lasts for three years.<sup>151</sup> It consists of the Chairman, who is at the same time the Director-Councillor of ERT-AE, the Vice-Chairman, three persons "who have been distinguished in sciences, arts, and journalism, and who are capable, due to their special knowledge and experience, to contribute to the achievement of ERT-AE's aim", one representative of ERT-AE's employees, and one member who is appointed by A.S.K.E. Teletheaton-Acroaton (Representative Assembly of Social Control of TV Viewers-Listeners).<sup>152</sup> The first five members are selected by the Minister of the Government Presidency, which means that the board of governors is dependent on the government and, given the three-year term of office, that members can be removed at the pleasure of the government.<sup>153</sup>

According to Article 7(2)(α), among the competencies of the board of governors is the shaping of basic principles which shall rule television programmes, after

---

<sup>148</sup> *Supra*, note 140, art. 2(1).

<sup>149</sup> *Supra*, note 140, art. 2(2).

<sup>150</sup> *Supra*, note 140, art. 6(1).

<sup>151</sup> *Supra*, note 140, art. 6(3).

<sup>152</sup> *Supra*, note 140, art. 6(1) (α)-(ε).

<sup>153</sup> T. Doukeri, "To Nomothetiko Plaisio tis Radiotileorasis stin Ellada" (1988) 10 *Armenopoulos* 1067 at 1072.

consultations with A.S.K.E.<sup>154</sup> The board of governors also supervises compliance with these principles.<sup>155</sup>

As a limited company, ERT-AE has a General Assembly of shareholders. It is comprised of one representative of the Minister of the Government Presidency, one representative of the Minister of National Economy, and one representative of the Minister of Finance.<sup>156</sup> The competencies of the General Assembly of shareholders are purely economic.<sup>157</sup>

Act 1730/1987 also established a body of fifty members, named A.S.K.E. Teletheaton-Acroaton (Representative Assembly of Social Control of TV Viewers-Listeners)<sup>158</sup>. The aim of A.S.K.E. is to exercise social control over ERT-AE.<sup>159</sup> Its members are representatives of political parties, of local communities, of ERT-AE's employees, of social and scientific groups, and of persons distinguished in arts and sciences.<sup>160</sup> They all offer their services for two years without pay.<sup>161</sup> A.S.K.E.'s responsibilities are, inter alia, to check up on the observation of the general principles set out in Article 3 (to be discussed below) and of the principles governing television programmes and shaped by the board of governors.<sup>162</sup>

---

<sup>154</sup> *Supra*, note 140, art. 5(1) (α).

<sup>155</sup> *Ibid.* art. 7(2) (α).

<sup>156</sup> *Supra*, note 140, art. 13(2) (α)-(γ).

<sup>157</sup> *Supra*, note 140, art. 13(4).

<sup>158</sup> *Ibid.* art. 4.

<sup>159</sup> *Supra*, note 140, art. 4(1).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Supra*, note 140, art. 4(7).

<sup>162</sup> *Ibid.* art. 5(1) (α).

Another administrative body is the Radio and Television Council, consisting of representatives of political parties and members chosen by the Minister of the Government Presidency.<sup>163</sup> One of its competencies is to review whether the general principles of Article 3 of the legislation are observed.<sup>164</sup>

Moreover, Act 1730/1987, in its Article 17 (1), stipulates that a corporate body of private law in the form of a limited company is established by ERT-AE with the name "Radio and Television Programme Production and Marketing Company, ERT-AE". Obviously, the aim of this company is "the production and commerce of radio and television programmes, Greek and foreign".<sup>165</sup> To accomplish its aim, the company shall make contacts with the domestic and foreign market and with production contributors especially with artists and technicians.<sup>166</sup>

The law also provides for the setting up of a Special Service of Mass Media within the Ministry of the Government Presidency.<sup>167</sup> Its duty is to follow any technological and legislative evolution in the area of mass media and to cooperate with organizations which deal with matters of mass media.<sup>168</sup>

According to article 11 of the Act, an Institute of Audiovisual Media is also established. Its purpose is "the research and study of audiovisual media, the professional training of ERT-AE's senior employees, the establishment of a library, the preservation

---

<sup>163</sup> *Supra*, note 140, art. 9.

<sup>164</sup> *Ibid.* art. 9(4).

<sup>165</sup> *Supra*, note 140, art. 17(2).

<sup>166</sup> *Ibid.*

<sup>167</sup> *Supra*, note 140, art. 18.

<sup>168</sup> *Ibid.* art. 18(2).

and completion of archives, the organization of conferences and the publication of printed materials".<sup>169</sup>

Furthermore, it is interesting that Act 1730/1987 provides for the establishment of an Office for Radio and Television in the Ministry of National Education and Public Worship and in the Ministry of Cultural Affairs with the purpose "of attending radio and television developments pertinent to the competence of the ministries and of suggesting related programmes to ERT-AE".<sup>170</sup>

ERT-AE's sources of financing are, inter alia, a TV fee collected via the electricity bill, advertisements and contingent subsidies from the national budget.<sup>171</sup> Until 1992, the proportions of ERT-AE's sources of revenues were approximately as follows:<sup>172</sup>

Advertisements: 10%

Subsidies from the national budget: 8%

TV fee collected via the electricity bill: 75%

Other revenues (such as the sales of the published by ERT-AE TV guide "Radiotileorasi" (Radio-television), and revenues from co-productions): 7%

Lastly, I will refer to the general principles laid down in Article 3 of Act 1730/1987, which should govern television broadcasts. According to the Proposing Report on the Bill, these principles bind not only the administrative bodies and ERT-AE's employees but also the Minister who supervises ERT-AE.<sup>173</sup> Article 3(1)

---

<sup>169</sup> *Supra*, note 140, art. 11(1).

<sup>170</sup> *Ibid.* art. 19(1).

<sup>171</sup> *Supra*, note 140, art. 14(1) (α)-(γ).

<sup>172</sup> The data was provided by ERT-AE's Accounts Office. It includes the revenues of ET-1, ET-2, ET-3, (which was finally established as is mentioned below) and ERA (Greek Radio Broadcasting; it also belongs to ERT-AE organization).

<sup>173</sup> *Supra*, note 153 at 1069.

stipulates that television broadcasts of ERT-AE "shall be inspired by the ideals of freedom, democracy, national independence, peace and friendship between people". In the second paragraph of Article 3 the legislator makes clear and enumerates the principles that must rule television broadcasts. These principles are the following: a) "objectivity, completeness and timeliness of information"; b) "diversity of viewpoints and sources"; c) "good quality of broadcasts"; d) *preservation of the good quality of the Greek language*; [Emphasis added]; e) "respect of a person's personality and private life"; f) *"preservation, promotion and dissemination of the Greek civilization and the Greek tradition."* [Emphasis added]<sup>174</sup>. With respect to matters of national culture and tradition, the law also stipulates that ERT-AE is entitled to refuse the transmission of any advertisements and ought not to broadcast those which do not show respect for the cultural heritage and tradition of the country.<sup>175</sup> Moreover, ERT-AE shall care for the presentation, through the mass media, of matters of local communities, social groups, and working classes which are related to the social, economic and cultural development of the country.<sup>176</sup> However, no special broadcast or programming time is provided for such transmission.<sup>177</sup> Nor does the legislation provide for any specific enforcement mechanisms in relation to the above mentioned general principles.

In sum, we can say that the new law is certainly not a radical one. It does not create a separate independent regulator. Instead the administrative structure still allows tight government intervention. In addition, the existence of one television broadcasting organization, which has the broadcast monopoly and therefore no competition, cannot guarantee either good quality or diversity of programmes.<sup>178</sup> The law explicitly

---

<sup>174</sup> *Supra*, note 140, art. 3(2) (α)-(στ).

<sup>175</sup> *Ibid.* art. 3(8).

<sup>176</sup> *Supra*, note 140, art. 3(6).

<sup>177</sup> *Supra*, note 153 at 1071.

<sup>178</sup> *Ibid.* at 1074.

stipulates that the national language must be protected and the national culture preserved and promoted. Thus, television channels should include in their programming time broadcasts pertinent to Greek culture and language. However, no particular measures have been provided in order to facilitate or contribute to the fulfilment of the above stipulation.

#### **SECTION D: Liberalization of Greek Television**

The legislation which allowed for the establishment of private television stations was the result of a de facto deregulation. During their years in opposition, the socialists opposed the state monopoly over the broadcasting sector. However, when they came into power (in 1981), they hardly did anything to change it<sup>179</sup>. Only in 1987, did they provide for the liberalization of Greek radio (Act 1730/1987). The socialist government still appeared unwilling to liberalize television, even though there was a lot of pressure from some mayors, and even though the public, tired of the government's control over television, was ready to welcome private initiatives.<sup>180</sup> In January 1988, reacting to that reluctance, the mayor of Thessaloniki began to retransmit satellite channel programmes in the city through VHF antennae,<sup>181</sup> and later established a television station, the TV 100.<sup>182</sup> The mayor of Athens announced his intention to follow the example of Thessaloniki's mayor, while the mayor of Piraeus discussed the possibility of a terrestrial pay-channel.<sup>183</sup> Moreover, in Athens private channels were set up, such as Mega Channel and Antenna, and started to broadcast illegally.<sup>184</sup> People welcomed

---

<sup>179</sup> *Supra*, note 27 at 31.

<sup>180</sup> *Supra*, note 27 at 31-32.

<sup>181</sup> *Supra*, note 27 at 32.

<sup>182</sup> *Supra*, note 31 at 272.

<sup>183</sup> *Supra*, note 27 at 32.

<sup>184</sup> *Supra*, note 31 at 272.

the advent of private television: for example, Mega Channel's audience share, in its first week of broadcasting, was 31%.<sup>185</sup>

The new conservative government (after the April 1990 elections) was actually forced to respond positively to the above situation. Its response was the enactment of Act 1866/1989<sup>186</sup>.

According to the Proposing Report on the Bill,<sup>187</sup> the new Act introduced "two fundamental reforms". "The first aims at the release of state television stations from the governmental dependence and at the possible assurance of their administrative and functional autonomy. The second introduces the freedom to establish private television stations and thus safeguards pluralism and competition in the means of providing information".<sup>188</sup> Both reforms further the constitutional freedoms of speech and information.<sup>189</sup>

Indeed, Act 1866/1989 regulates two subjects. The first is the establishment of the National Council of Radio and Television (NCRT).<sup>190</sup> The NCRT is an independent authority which the law has entrusted with the exercise of "direct state control" referred to in Article 15(2) of the Greek Constitution. Its purpose is to guarantee compliance with the constitutional principles of objectivity, equality and

---

<sup>185</sup> *Ibid.*

<sup>186</sup> *Act no 1866*, Hellenic Republic Gazette, 6 October 1989, Fasc. A, No. 222.

<sup>187</sup> Greek Parliament, *Proposing Report on the Bill: "The Establishment of a National Council of Radio and Television and the Grant of Licences for the Establishment and Operation of Television Stations*, Parliament Archives, Period E - Session A, from 3-7-1989 to 12-10-1989.

<sup>188</sup> *Ibid.* at 1.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Supra*, note 186, arts 1,2 and 3.



quality.<sup>191</sup> The second subject is the liberalization of television broadcasting by allowing the establishment and operation of private and municipal television stations.<sup>192</sup> The Proposing Report explains that apart from Articles 14 and 15 of the Greek Constitution, which do not impose a state monopoly, international law, such as Article 10 of the European Convention on Human Rights, also provides the right to establish private television stations.<sup>193</sup> Consequently, for the first time the state monopoly over the television broadcasting system is abolished. Very pointedly, the Proposing Report states: "Nothing can resist the power of a station like another station. Competition will improve quality, neutralize propaganda and free viewers ... by giving them the right of judgement and choice".<sup>194</sup>

Before we proceed to the examination of Act 1866/1989, it must be mentioned that Act 1730/87 continues to be in force and governs the state service of television broadcasting, yet it has been amended by the new Act. The basic difference between the two Acts is that according to Act 1866/89 the control over private as well as public television will be exercised by an independent body, the NCRT, and not by the government.<sup>195</sup>

To begin with the discussion of Act 1866/89, Article 1(1) provides the establishment of the NCRT as an independent authority with its own secretariat and budget. In exercising its jurisdiction the NCRT is not subject to any administrative control.<sup>196</sup> It, however, belongs to the Ministry of the Government Presidency pursuant

---

<sup>191</sup> P.D. Dagoglou, *Radio-Tileorasi Kai Sydagma*, (Athens: A.N. Sakkoula Publications, 1990) at 15.

<sup>192</sup> *Supra*, note 186, arts 4 et foll.

<sup>193</sup> *Supra*, note 187 at 1.

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Supra*, note 186, art. 1(2).

to Article 1(2) of Act 1866/1989. According to the Proposing Report, the purpose of this provision is only "to make the parliamentary control feasible".<sup>197</sup> The independence of the NCRT is assured by the enactment of the following provisions:<sup>198</sup> Firstly, the NCRT is a nineteen-member body consisting of "well known personalities of letters, arts, science, technology and politics."<sup>199</sup> Secondly, its members are chosen by political parties and some organizations such as the Editor Association of Athens Daily Newspapers, the Pan-Hellenic Federation of Sight and Sound, the Greek Church, the Athens Academy, the Legal Council of State. They are not considered direct representatives of these organizations and political parties and, only formally, are appointed by the Minister of the Government Presidency for a period of six years. None of the NCRT members is a representative of the government. However, the chairman of the NCRT is chosen by the political party which is in the government.<sup>200</sup> Thirdly, during the exercise of their duties, the members of the NCRT are subject only to the Constitution and legislation. They can not be forced to obey any order of the government or of the organizations which chose them.<sup>201</sup> Finally, a member of the NCRT cannot hold certain political posts (those of a member of the government, a member of the parliament, an under-secretary of state and a ministerial secretary) and cannot participate (as a partner, shareholder-member of the board of directors and employee) in a company involved in the production, trade and transmission of radio and

---

<sup>197</sup> *Supra*, note 191 at 15.

<sup>198</sup> *Supra*, note 187 at 1.

<sup>199</sup> *Supra*, note 186, art. 2(1). The Ministerial Decision 22255/2/3-11-1990, which was confirmed by Article 78 of Act 1943/1991 (*Act no 1943*, Hellenic Republic Gazette, 11 April 1991, Fasc. A, No. 50) expanded the membership of the NCRT from eleven members (as provided for in Article 2(1) of Act 1866/1989) to nineteen. As it was explained in the B' Pan-Hellenic Conference on the Mass Media, held in Athens in June 1993, the main reason for this expansion was the fact that the members who are chosen by the political parties as opposed to the members chosen by some organizations, were in the majority, and that was incompatible with the NCRT's technocratic character. Therefore, the Ministerial Decision added eight members who are chosen by some organizations and not by political parties.

<sup>200</sup> *Ibid.* *Supra*, note 186, art. 2(2), (3). *Supra*, note 191 at 16. *Supra*, note 187 at 1.

<sup>201</sup> *Supra*, note 186, art. 1(2). *Supra*, note 191 at 16.

television programmes.<sup>202</sup> The law also stipulates that a Presidential Decree can add to the list of personal associations incompatible with membership in the NCRT.<sup>203</sup> Indeed, Presidential Decree 573/1989 provides that the lack of Greek citizenship and the conviction for certain crimes are incompatible with membership in the NCRT.<sup>204</sup>

The duties of the NCRT are generally "assuring freedom of speech and pluralism, observing journalistic ethics and promoting the quality of radio and television programmes, in accordance with the Constitution."<sup>205</sup> Furthermore, Article 3 determines the jurisdiction of the NCRT. In particular, firstly, the NCRT exercises the "direct state control" over private and public television "with the purpose of safeguarding the objectivity, equality and quality of the programmes according to Article 15(2) of the Constitution."<sup>206</sup> Secondly, it enacts regulations which set out the code of ethics for journalists and for programmes and advertisements on both private and public television.<sup>207</sup> For the time being the regulations concerning television programmes show but slight concern for the Greek language and for Greek culture. In particular, Regulation 2/1991<sup>208</sup> states, in Article 2(4), that "the composition, presentation and subtitles of the broadcasts must carefully observe the generally accepted grammatical and structural rules of the Greek language". The only reference to national culture is made in Article 2(1), which stipulates that television broadcasts "must assure the qualitative level related to the social mission of radio and television and to the cultural development

---

<sup>202</sup> *Supra*, note 186, art. 2(5) second para. *Supra*, note 191 at 17-18.

<sup>203</sup> *Supra*, note 186, art. 2(5) first para.

<sup>204</sup> *Presidential Decree no 573*, Hellenic Republic Gazette, 8 December 1989, Fasc. A, No. 244, art. 1.

<sup>205</sup> *Supra*, note 186, art. 1(3).

<sup>206</sup> *Ibid.* art. 3(1).

<sup>207</sup> *Supra*, note 186, art. 3(2).

<sup>208</sup> *Regulation no 2/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 21 June 1991, Fasc. B, No. 421.

of the country" - a repetition of the general principle of quality referred to in Article 15(2) of the Greek Constitution 1975/86. It is only within Regulation 3/1991<sup>209</sup> concerning the code of ethics for advertisements, that the NCRT mentions national culture: Article 4(2)(θ) prohibits the broadcasting of advertisements which "exploit illicitly national matters, sacred documents, the national cultural and intellectual heritage...". Thirdly, the NCRT has the power to impose sanctions against private and public television stations, as discussed below.<sup>210</sup> Fourthly, it proposes the names of persons for appointment to the posts of Chairman, Vice-Chairman and of the non-syndicalistic members (except of the one selected by A.S.K.E. (Representative Assembly of Social Control)) of ERT-AE's board of governors.<sup>211</sup> Fifthly, it gives its (non-binding) opinion concerning the grant of licences to private and municipal television stations.<sup>212</sup> Sixthly, the NCRT exercises the powers of the Radio and Television Council which is provided in Article 9 of Act 1730/87 and abolished by the new Act.<sup>213</sup> Therefore, it is the NCRT which now decides whether television broadcasts abide by the general principles set out in Article 3(2) of Act 1730/87.<sup>214</sup> Other powers of the NCRT will be mentioned below while discussing the matter of liberalization of Greek television.

The question which is now raised is whether NCRT is a truly independent body and whether it can play a significant role in the television broadcasting sector. The legal provisions seem radical, yet the reality is rather disappointing. The NCRT is composed

---

<sup>209</sup> *Regulation no 3/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 18 July 1991, Fasc. B, No. 538.

<sup>210</sup> *Supra*, note 186, art. 3(3).

<sup>211</sup> *Ibid.* art. 3(4).

<sup>212</sup> *Supra*, note 186, art. 3(6).

<sup>213</sup> *Ibid.* art. 3(9).

<sup>214</sup> *Supra*, note 140, art. 9 and *supra*, note 186, art. 3(9).

of nineteen persons who cannot be occupied exclusively with the Council's work since they have their own jobs, their own careers. On the other hand, the duties, which the law has given to them, are many. The consultative and regulative tasks themselves are huge. It is, therefore, very difficult for them to cope successfully with these duties and at the same time to exercise control over approximately 92 television channels. In addition, it is doubtful whether these persons or at least the majority of them possess any special knowledge necessary for television activities. However, the most important practical observation is that the NCRT plays a limited role as regards the grant of licences. The licences for television stations are granted following the decision of some Ministers (as discussed below), and the NCRT gives only its non-binding opinion. On this point, the NCRT is not an independent body. It is the government which finally decides to whom a licence should be granted. Therefore, the government is still able to interfere with and impose its will on television matters. Also, knowing the Greek tradition of governmental intervention, it is hard to believe that the Minister of the Government Presidency will "only formally" appoint the proposed members. It is also questionable whether the members of the NCRT will not act as representatives of the organizations and political parties which chose them. In other words, it seems that the independence of the NCRT mostly lies with its members' mentality and attitude. In Pan-Hellenic Conference on Mass Media, held in Athens in June 1993, it was stated that "the National Council of Radio and Television failed as an independent administrative authority", and that the government attempted, often successfully, to achieve within the membership of the NCRT a composition beneficial to it.<sup>215</sup> Nevertheless, despite the foregoing, it cannot be said that the role of the NCRT is insignificant; some of its opinions are binding, and it also has a regulatory and supervisory role. Act 1866/89 definitely initiated a different and more independent structure in the area of television broadcasting, which can function effectively provided that the necessary changes will occur.

---

<sup>215</sup> A. Vgontzas, Address (B' Pan-Hellenic Conference on the Mass Media, Athens, 17 June 1993) [unpublished].

Let us now examine the second subject regulated by Act 1866/89, namely, the provision of the right to establish and operate private and municipal television stations. Article 4 of the Act provides limited companies and municipalities with the right to obtain a licence for the establishment and operation of local television stations. From this provision, we glean, firstly, that a licence can be granted only to limited companies<sup>216</sup> and municipalities and not to other companies or individuals. Secondly licences are granted for the establishment of local and not national television stations. Nevertheless, a new law, Act 1943/91, stipulates that local television stations can establish a national network by acquiring a special licence.<sup>217</sup>

Furthermore, the licence is given following the decision of the Minister of the Government Presidency, the Minister of Internal Affairs, the Minister of Finance and the Minister of Transport and Communications after consulting the NCRT - its opinion being

---

<sup>216</sup> Limited company (Anonymi Eteria) is a commercial, capital company whose capital is divided into shares. Articles 8(2) of Act 2190/1920 and 33 of Act 2065/1992 impose a minimum for the company's share-capital, which is ten million drachmas. In a limited company the partners' liability for the company's obligations is confined to the amount of their contribution to the company. Their personal fortune cannot be touched. The company's bodies are the General Meeting of Shareholders, which is the utmost body of the company, the board of directors, whose members can be shareholders or non-shareholders and which are elected by the General Meeting of the Shareholders, and the Auditors. (K. Rokas, *Eisigiseis tou Eborikou Dikaiou*, (Athens: A. Sakkoula Publications, 1972) at 39, 49, 53). Some of the other kinds of companies which exist in Greece are the Limited Liability Company, the General Partnership, the Limited Partnership and the Sleeping Partnership. The Limited liability Company (EPE) is a commercial capital company whose capital is not divided into shares. The minimum for the company's capital is 3 million drachmas according to Article 4(1) of Act 3190/1955 as was amended by Article 38(3) of Act 2065/1992. The partners' liability is limited to the amount of their contribution to the company. The company's bodies are the Meeting of Partners, which is the utmost body of the company, and the Administrators, which are appointed by the Meeting of Partners. If it does not appoint administrators, the company's administration belong to all the partners. (K. Rokas, *Eisigiseis tou Eborikou Dikaiou*, (Athens: A. Sakkoula Publications, 1972) at 67,69). The other three kinds of companies are not capital companies. All the partners of the General partnership (general partners) and only the general partners of the Limited Partnership (in contrast with its limited partners) are liable for the company's obligations even with their personal fortune. They also have the right to represent the company. The Sleeping Partnership is not a legal entity. Consequently, the partner who deals with third persons, acts in his own name. Therefore, it is him who acquires rights and undertakes obligations for which he is also liable. (K. Rokas, *Eisigiseis tou Eborikou Dikaiou*, (Athens: A. Sakkoula Publications, 1972) at 35-39).

<sup>217</sup> Act no 1943, Hellenic Republic Gazette, 11 April 1991, Fasc. A, No. 50, art 85(4).

non-binding.<sup>218</sup> Also, it can be granted for the establishment of any type of television system including cable and satellite.<sup>219</sup> However, the law has placed some restrictions in order to prevent the monopolization of television stations by one or few persons and therefore to protect pluralism and the freedom of speech and information.<sup>220</sup> In particular, the transfer of the use or exploitation of the television station to individuals or legal entities, with the exception of municipal companies, is prohibited.<sup>221</sup> The law also prohibits the grant of more than one licence to the same limited company or to the same municipality.<sup>222</sup> In addition, the same individual or legal entity "cannot participate, in whole or in part, in a second television station as an owner or under other equal capacity such as that of a shareholder, a manager or a member of the board of governors."<sup>223</sup> For the same reason, Act 1866/89, with respect to limited companies, confines individual ownership to 25% (maximum) of share capital.<sup>224</sup> Likewise, the Act impedes the creation of the so called "family limited companies" by limiting the amount of shares which belong to relatives up to fourth degree (including it) to 25% of the share capital.<sup>225</sup> In order to facilitate the knowledge and the checking of the distribution of the shares within the company, the law states that the shares must be registered.<sup>226</sup> Act 1866/89 also contained a provision according to which "the

---

<sup>218</sup> *Supra*, note 186, art. 4.

<sup>219</sup> *Supra*, note 186, art. 4. See also: *Regulation no 5/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 18 December 1991, Fasc. B, No. 1018, art 2.

<sup>220</sup> *Supra*, note 15 at 75-76.

<sup>221</sup> *Supra*, note 186, art. 4(ε). *Regulation no 5/1991*, *supra*, note 219, art. 6(1).

<sup>222</sup> *Regulation no 5/1991*, *Supra*, note 219, art. 4(1).

<sup>223</sup> *Supra*, note 186, art. 4(ζ). *Regulation no 5/1991*, *supra*, note 219, art. 4(2).

<sup>224</sup> *Supra*, note 186, art. 4(α).

<sup>225</sup> *Ibid.*

<sup>226</sup> *Ibid.*

participation of foreign capital cannot exceed 25% of the company's share capital.<sup>227</sup> However, in Article 12 of Presidential Decree 236/1992<sup>228</sup>, this provision was rendered inapplicable to the citizens of the European Community Member-States as contrary to European Community law.

The compliance with the above restrictions which concern limited companies is a necessary condition for the acquisition of a licence by the limited company.<sup>229</sup> Furthermore, the company must be solvent and credible, and its shareholders must not have been convicted of certain crimes.<sup>230</sup> Another criterion for the grant of a licence to a limited company is its shareholders' experience in the field of mass media.<sup>231</sup>

Other criteria for the grant or renewal of a licence that refer to both limited companies and municipalities are the following: the completeness and the quality of their programmes,<sup>232</sup> the compliance with the principles and the rules of operation regarding mass media,<sup>233</sup> and the technical capability of the television station.<sup>234</sup> For the renewal of a licence, the level of the station's popularity is also taken into account in relation to the kind of programmes it broadcasts.<sup>235</sup> However, this criterion creates a high commercial incentive.

---

<sup>227</sup> *Ibid.*

<sup>228</sup> *Presidential Decree no 236*, Hellenic Republic Gazette, 16 July 1992, Fasc. A, No. 124.

<sup>229</sup> *Supra*, note 186, art. 4. *Regulation no 5/1991*, *supra*, note 219, 5(1) (α).

<sup>230</sup> *Supra*, note 186, art. 4 (β). *Regulation no 5/1991*, *supra*, note 219, art. 5(1) (β) (γ).

<sup>231</sup> *Supra*, note 186, art. 4 (δ).

<sup>232</sup> *Supra*, note 186, art. 4 (δ). *Regulation no 5/1991*, *supra*, note 219, 5(1) (ε).

<sup>233</sup> *Regulation no 5/1991*, *supra*, note 219, art. 5(1) (σ).

<sup>234</sup> *Ibid.* art. 5(1) (δ).

<sup>235</sup> *Regulation no 5/1991*, *supra*, note 219, art. 5(5).



After the grant of the licence, the limited company (but not the municipality) has to conclude a contract with the Greek government, which must first obtain the concurrent opinion of the NCRT.<sup>236</sup> The contract is drafted by the NCRT and contains the general obligations for the different categories of television stations and the particular conditions and obligations for the particular grant of licence.<sup>237</sup> Moreover, the law itself provides some obligations. With respect to the content of broadcasts, private television stations are subject to the same obligations as the public broadcasting organization ERT-AE.<sup>238</sup> Consequently, the broadcasts of the private television stations must be ruled by the principles of "the preservation of the quality of the Greek language", of "the preservation, promotion and dissemination of the Greek civilization and the Greek tradition" and of "the good quality of broadcasts".<sup>239</sup> Another obligation which is imposed only on the private television stations and not on ERT-AE, is that "the contract must include a particular provision for the assuring of a satisfactory percentage of European production programmes, which cannot be under 50%, excluding information broadcasts."<sup>240</sup> This provision is stricter than the similar one which is provided in Directive 89/552 of the European Community.<sup>241</sup> Presidential Decree 236/1992, which implemented the European Directive, contains a quota requirement for European productions, which, however, is imposed on both private and public television stations.<sup>242</sup> The same Presidential Decree abolished, as being incompatible with the Community law, the first and the only provision of Greek legislation which required a proportion of national production programmes in the programming time of television

---

<sup>236</sup> *Supra*, note 186, art. 5

<sup>237</sup> *Ibid.*

<sup>238</sup> *Supra*, note 186, art. 6(2) first para.

<sup>239</sup> *Supra*, note 140, art. 3(2) (δ)(στ)(γ).

<sup>240</sup> *Supra*, note 186, art. 6(7) first para.

<sup>241</sup> *Supra*, note 191 at 35. (Discussed in Chapter 2 below).

<sup>242</sup> *Supra*, note 228, art. 4(1).

channels.<sup>243</sup> That provision stated that "a special concern must be shown in the contract for a satisfactory percentage of national production programmes on the basis of programme categories ...<sup>244</sup> The law did not fix the percentage; that would be subject to agreement between the contracting parties.<sup>245</sup> Greek production was therefore protected less than European production.<sup>246</sup> In any event, Presidential Decree 236/92 erased any protection for Greek production.

Finally, the licence and the contract are valid for a seven-year period with the possibility of a renewal.<sup>247</sup> Nonetheless, in the case of violation of the law, of the codes of ethics, of the terms of the contract, and of the technical obligations, the NCRT can force the following sanctions upon private and public television stations: warnings, fines, and provisional suspension of the operation of the television station for a period up to three months.<sup>248</sup> For the same violations the law also provides for the recall of the licence, following the decision of the Minister of Government Presidency after obtaining the concurrent opinion of the NCRT. The licence is recalled especially in the case where the sanction of the provisional suspension of the licence has been imposed in the past and there exists a violation which would justify the imposition of the same sanction.<sup>249</sup>

In summary, the state monopoly over Greek television broadcasting has been removed. Limited companies and municipalities are entitled to acquire a licence for the

---

<sup>243</sup> *Ibid.* art. 12.

<sup>244</sup> *Supra*, note 186, art. 6(7) second para.

<sup>245</sup> *Ibid.*

<sup>246</sup> *Supra*, note 191 at. 35.

<sup>247</sup> *Supra*, note 186, art. 5.

<sup>248</sup> *Ibid.* art. 3(3).

<sup>249</sup> *Supra*, note 186, art. 10.

establishment of local television stations or under a special licence of a national network. Act 1866/1989 established the National Council of Radio and Television (NCRT) and entrusted it with the fundamental duties of exercising "direct state control" over private and public television, of providing its non-binding opinion for the grant of a licence and its concurrent opinion for its recall, of proposing five of the seven members of the ERT-AE's board of governors, of reviewing compliance with the general principles governing television broadcasts and of enacting regulations. The NCRT was established as an independent authority. For the time being, its independence is questionable and its present organization does not promise an effective and dynamic role of the NCRT in the television broadcasting sector. This, however, does not mean that the NCRT has been deprived of all importance. Finally, private as well as public television should respect the principles related to the maintenance and promotion of Greek culture and language. Special emphasis is placed on the quality of the programmes, yet there exists no quota or other requirement concerning Greek content programmes, although the EEC quota on European production has been implemented.

### **SECTION E: The Current Status of Television Broadcasting**

In this part of the thesis reference will be made firstly to the present state of television channels, secondly to the preferences of the home audience, and thirdly to the content of the programmes.

The introduction of competition in television broadcasting was fruitful in Greece. Many private channels have emerged and new ones are starting up all over the country.<sup>250</sup> According to information provided by the Ministry of the Government Presidency, 1400 applications have been made. Mega Channel, Antenna, New Channel, Kanali 29 and Seven-X are well-known private channels established in Athens (Attiki). In the field of public broadcasting we have two national channels ET-1 and ET-2, and

---

<sup>250</sup> S. Papathanassopoulos, "The Greeks Throw Caution to the Wind" (1990) *Television Business International* 20 at 20.

a third channel ET-3, which broadcasts in the area of Thessaloniki and was actually established to compete with station TV 100 of Thessaloniki.<sup>251</sup>

Until July 1993, all the private channels were broadcasting illegally, for they did not have any official authorization to transmit.<sup>252</sup> Instead they seem to have followed the example of Thessaloniki's Mayor: "start broadcasting and sooner or later we'll get the permission!"<sup>253</sup> However, in March 1990, two stations, Mega Channel and New Channel, obtained provisional licences.<sup>254</sup> In July 1993, the government, ignoring the fact that the consultative procedure within the NCRT had not finished yet, granted licences for the establishment of national networks to the following six private channels: Mega channel, Antenna, Nea Tileorasi (New Television), New Channel, Seven X and Kanali 29.<sup>255</sup>

With respect to audience ratings, according to a survey conducted by AGB Hellas,<sup>256</sup> the two channels, Mega Channel and Antenna, which cover 70% of the country with their transmitters,<sup>257</sup> have the highest percentage of TV viewers. The ratings are as follows: Mega Channel: 31.90 %, Antenna TV: 30.54%, ET-1: 8.96% and ET-2: 5.47%.<sup>258</sup>

---

<sup>251</sup> *Supra*, note 31 at 272.

<sup>252</sup> S. Papathanassopoulos, "Sti Hora opou Anthei ei Faidra Portokalea", *Kathemerini* (30 August 1992) 41.

<sup>253</sup> *Supra*, note 250 at 20.

<sup>254</sup> *Ibid. and supra*, note 31 at 272.

<sup>255</sup> C. Coraei, "Politiki Thiella apo ton Apoklismo" *Eleftherotipia* (24 July 1993) 3.

<sup>256</sup> AGB Hellas, Systems of Market Information: a company which makes research on TV viewers' preferences and on channels' audience share.

<sup>257</sup> AGB Hellas.

<sup>258</sup> "Stathera Proto to Mega: Miothikai Ki Allo to Pososto tis ET-1" *Kathemerini* (27 August 1992), 13.

ERT, the public broadcasting organization which until the introduction of private television had a monopoly on television broadcasting and 89% of the TV viewers,<sup>259</sup> has now lost most of its audience share. Moreover, due to competition, its financial situation and the quality of its programmes have deteriorated. Its debt exceeds \$250 million.<sup>260</sup> To remedy the situation, a more commercial approach has been adopted. The option of privatizing ET-2 or ET-3 or increasing advertising time is also being considered.<sup>261</sup>

In the private sector, Mega Channel, the most popular private television station, is owned by Telertipos company, a group of the most powerful Athenian publishers<sup>262</sup>. In 1990, it spent 4 billion drachmas (\$25 million) broadcasting from 3pm to 1am.<sup>263</sup>

The New Channel is owned by another group of Athenian publishers.<sup>264</sup> Antenna is owned by a group of businessmen. Another owner is the publisher of the left-wing daily, *Proti*.<sup>265</sup> Kanali 29 is owned by Kouris Bros. Publishing Group, which owns the daily *Avriani*.<sup>266</sup>

One thus observes that powerful publishers own or are co-owners of television stations, including those which have a large audience share (e.g. Mega Channel). This raises concerns for pluralism. For the time being the Greek government has not adopted

---

<sup>259</sup> AGB Hellas.

<sup>260</sup> *Supra*, note 31 at 272.

<sup>261</sup> *Supra*, note 250.

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

a clear-cut policy on broadcasting licensing or on media concentration.<sup>267</sup> It is clear, however, that Act 1866/89 limits individual ownership in a broadcasting limited company to 25%.<sup>268</sup> Moreover, there is no public study on the limits of the market and whether all these channels will be able to survive.<sup>269</sup>

There is, in addition, one privately-owned pay channel, called TV Plus. This channel is the result of a cooperation agreement between the municipality of Piraeus and the Greek American businessman, Daniel Bourlas. It has approximately 3000 subscribers.<sup>270</sup>

Cable television is experimental;<sup>271</sup> consequently, access to foreign commercial channels is confined to satellite reception.<sup>272</sup> The foreign channels that are retransmitted are four English language (MTV, CNN, Super, Sky TV), two Italian (RAI-1 and RAI-2), one French (TV 5), one Spanish (TVE), three German (Eurosport, Sat-3 and Sat-1) and the Russian (Gorizont).<sup>273</sup> ERT retransmits satellite channels to ten major Greek cities through VHF frequencies. Nevertheless, the retransmitted signals are weak, and therefore, viewers have to adjust their sets and buy new accessory equipment.<sup>274</sup>

---

<sup>267</sup> *Ibid.*

<sup>268</sup> *Supra*, note 186, art. 4.

<sup>269</sup> *Supra*, note 250.

<sup>270</sup> S. Papathanassopoulos, "Me Vima Argo ei Anaptixi tis Tileorasis Sindromiton... stin Europi-Kirios Adipalos to video" *Kathemerini* (30 August 1992) 41.

<sup>271</sup> *Supra*, note 31 at 271.

<sup>272</sup> *Ibid.* at 273.

<sup>273</sup> S. Papathanassopoulos, "Greek Politics Strangle Process" (1989) *Television Business International* 14 at 14. TV Zaping of 17 April 1992, no 5. TV Zaping of 14 August, 1992, no 22.

<sup>274</sup> Papathanassopoulos, *Ibid.*

Let us now examine what kind of programmes Greeks prefer. To begin with, it must be mentioned that according to information provided by AGB Hellas, the average Greek (in Athens and Thessaloniki) watches television, on the average, 186 minutes daily - that is, about three hours.<sup>275</sup>

With respect to their preferences, Greeks favour domestic programmes and particularly Greek series and films. As regards foreign productions, they prefer some soap operas and films.<sup>276</sup>

The predilection for domestic programmes can be illustrated by the following examples and statistics. The TV Guide, TV-Zaping of the week of 18 to 24 April 1992<sup>277</sup> published the top ten broadcasts of the previous week (6 to 12 April) - broadcasts which had the largest audience share. From those broadcasts nine were Greek and one foreign. The Greek programmes included six series, one film, one news report and one game show.

Furthermore, AGB Hellas carried on a research during the week of April 13 to 19, 1992 with a population sample of 4,061,406 people in order to ascertain the preference of home viewers related to programme categories.<sup>278</sup> From the statistics produced we notice that a large percentage of the home audience prefers series, films, some game shows and sports events and the evening news. With respect to series, from the first ten, nine were domestic and one foreign. Foreign soap operas such as "The Bold and the Beautiful" and "Santa Barbara", had an audience percentage ranging from 6.97% to 10.32%, while the first in audience share series (a Greek one) held 20.21%.

---

<sup>275</sup> This is referred to data of October 1992.

<sup>276</sup> AGB Hellas.

<sup>277</sup> TV Zaping of 17 April 1992, no 5.

<sup>278</sup> AGB Hellas; statistics on programme categories.

While it appears undisputed that Greek people favour domestic series, as regards films, the first two were Greek (19.64% and 14.16%), yet foreign movies were included in the first choices of the viewers. In particular from the top ten movies, 6 were foreign with a percentage ranging from 8.43 to 13.26%.

Next, I will refer to another survey of AGB Hellas, conducted on the basis of social classes during the week of February 10 to 16, 1992 with the purpose of ascertaining their choice.<sup>279</sup> To begin with, in relation to the "lower class",<sup>280</sup> we observe that from 100 registered broadcasts which were watched by a population sample of 1,283,072 people, about 26 were foreign. The domestic ones included mostly series, films, game shows, evening news, football and basketball games. From the first ten broadcasts - the ones which had the highest percentage of TV viewers - eight were Greek (five series, evening news and a film) and two foreign (actually it was the Sunday foreign film interrupted by the midnight news). Three Greek series had the highest proportions of the home audience (27.44%, 26.87% and 22.76%). As regards foreign productions, the Saturday and Sunday films and two soap operas, "The Bold and the Beautiful" and "Santa Barbara", had a significant audience share. For example, the Sunday film before the midnight news had 20.81%, after the midnight news 18.69%, "The Bold and the Beautiful" 17.66%, and "Santa Barbara" 13.71%.

Continuing with the "middle class" and a population sample of 1,484,813 people, we have data similar to that of the "lower class". In particular, from 100 registered broadcasts which were watched by the sample of population, about 30 were foreign, from which the Saturday, Sunday and Monday films had high audience shares (the highest being 22.34%). The domestic programme categories which were most watched were the same with those watched by the "lower class". Also, of the first ten broadcasts once

---

<sup>279</sup> AGB Hellas; statistics concerning the TV viewers' preferences on the basis of social classes.

<sup>280</sup> AGB Hellas makes the distinction of "lower", "middle" and "upper" class on the basis of wealth and education.



again eight were domestic (four series, a basketball game, evening and midnight news, one film) and two foreign (the Sunday film interrupted by the midnight news). Moreover, the first two broadcasts in audience share were domestic series.

Finally, with respect to the "upper class" the data based on a sample of 842,401 people were the following: 28 out of 100 broadcasts registered and watched by the population sample were foreign. Domestic broadcasts included the same programme categories with those watched by the other two social classes. The first ten broadcasts were Greek (four series, one film, one game show, evening news) with the exception of the Sunday foreign film. Also, the first three choices of TV viewers were Greek series.

The conclusions which can be drawn from the above information are that all three social classes watch mostly Greek programmes - in particular series, films, evening news, game shows, football and basketball games - with a special preference for the first three programme categories. Nevertheless, the Saturday and Sunday foreign films attract a significant percentage of the home TV viewers.

The latter observation concerns the programming content of Greek television channels. As has already been mentioned, the national television broadcasting legislation which is now in force requires that broadcasts be governed by, inter alia, the principle of "the preservation of the quality of the Greek language" and the principle of "the maintenance, promotion and dissemination of the Greek civilization and the Greek tradition".<sup>281</sup> This requirement allows us to conclude that television programming should, firstly, protect the Greek language and, secondly, contain broadcasts which will promote the national civilization and culture. Such broadcasts can be domestic historical-cultural documentaries or other information broadcasts referred to Greek civilization and culture, broadcasts devoted to traditional and new Greek music and arts, domestic films and series.

---

<sup>281</sup> *Supra*, note 140, art. 3. *Supra*, note 186, art. 6(2).

Let us examine the current profile of Greek television channels in terms of programming, and whether the aforementioned principles have been implemented. To begin with, it must be mentioned that the transmission time of the channels has been increased. Mega Channel, the most popular channel in Greece, introduced morning television. Its example was followed by other private channels (for instance, by the second most popular channel, Antenna) as well as by the public channel ET-1. The second public channel, ET-2, incorporates into its programme schedule a morning zone only on the weekends.<sup>282</sup> In an attempt to fill their broadcasting time, television channels usually resort to the American market and purchase "packages". A "package" contains a good-quality production and some bad-quality ones, which the channels show during the late-night programme zone. In order to have a more detailed understanding of the current programming profile of Greek television, it is essential to cite the results of the study<sup>283</sup> of four channels' programme schedule in March 1993. The surveyed channels are the two public, nation-wide channels, ET-1 and ET-2, and the two private channels (nation-wide from July 1993), Mega Channel and Antenna. My preference for these private channels is based on the fact that they are the most popular channels in Greece, and that they cover 70% of the country with their transmitters, as has already been mentioned. The study is focused on three issues: firstly, the percentages of Greek

---

<sup>282</sup> TV Zaping of 17 September 1993, no 79.

<sup>283</sup> The figures referred to ET-1 have been provided by the Research Department of the channel. On the contrary, the information concerning the prime-time and peak time, the cultural broadcasts and the American or European origin of foreign programmes of ET-1 as well as all the data referred to the other three channels (ET-2, Mega Channel and Antenna) are the result of my study based on the channels' detailed daily programme schedule of March 16 to 22, 1993, which was supplied by MEDIA SERVICES S.A., and on a TV guide (TV Zaping of 12 March 1993, no 52 and of 19 March 1993, no 53). The monthly figures have been calculated on average. In addition, with respect to programme categories, news and sports are mostly of domestic origin, with the exception of the CBS news transmitted by Antenna's satellite every morning at 6:30 and the rediffusion of football and basketball games between foreign teams. Information broadcasts include current affairs, documentaries and other information broadcasts. Talk shows (morning light talk shows or those discussing politics) even though they constitute separate types of programmes, have been also included in that programme category in an attempt to reduce the number of the surveyed programme categories and, thus, avoid long tables. Music programmes include all kinds of music, that is traditional, light and classical. The programme category of "theatre" contains Greek plays shown on television. Finally, it must be said that all the provided hours and percentages of programmes are based on pure broadcasting time, namely, the broadcasting time which does not include the advertising time and the time devoted to trailers and announcements of the daily programmes.

and foreign programmes broadcast by each of the four channels; secondly, the percentages of Greek and foreign programmes in relation to various programme categories; and thirdly, the origin (Greek or foreign) and types of broadcasts transmitted during prime time and peak time. Issues such as the American or European origin of foreign programmes and the transmission of broadcasts whose special theme is the national culture, will be also considered.

To begin with, in March 1993, ET-1 broadcast a total of 540 hours from which 357 were devoted to Greek programmes and 183 to foreign programmes. In other words, Greek programmes covered 66.1% of the above broadcasting time while foreign programmes held 33.8%. With respect to programme categories, the proportions of domestic and foreign programmes (counted on the basis of the above total broadcasting hours, namely, 540 hours) were as follows:

	Total		Greek		Foreign	
	Hours	Percent.	Hours	Percent.	Hours	Percent.
News	44	8.14%	44	8.14%	-	-
Information broadcasts	51	9.44%	51	9.44%	-	-
Sports	51	9.44%	36	6.66%	15	2.77%
Educational broadcasts	19	3.51%	12	2.22%	7	1.29%
Religious broadcasts	8	1.48%	8	1.48%	-	-
Music: light	31	5.74%	30	5.55%	1	0.18%
traditional	5	0.92%	5	0.92%	-	-
classical	4	0.74%	2	0.37%	2	0.37%
Children's programmes	30	5.55%	2	0.37%	28	5.18%
Theatre	6	1.11%	6	1.11%	-	-
Series - Soap operas	82	15.18%	34	6.29%	48	8.88%
Films	129	23.88%	47	8.7%	82	15.18%
Entertainment - game shows	79	14.62%	79	14.62%	-	-
Other	1	0.18%	1	0.18%	-	-

On the basis of the total broadcasting hours covered by each of the programme categories, we have the following percentages:

	Total Hours	Greek Hours	Percent.	Foreign Hours	Percent.
News	44	44	100%	-	-
Information broadcasts	51	51	100%	-	-
Sports	51	36	70,5%	15	29,4%
Educational broadcasts	19	12	63,15%	7	36,8%
Religious broadcasts	8	8	100%	-	-
Music: light	31	30	96,7%	1	3,22%
traditional	5	5	100%	-	-
classical	4	2	50%	2	50%
Children's programmes	30	2	6,66%	28	93,33%
Theatre	6	6	100%	-	-
Series - soap operas	82	34	41,46%	48	58,53%
Films	129	47	36,4%	82	63,5%
Entertainment - game shows	79	79	100%	-	-
Other	1	1	100%	-	-

One notices that while the overall percentage of Greek programmes was higher than that of foreign programmes, when it comes to programme categories, foreign series, and films (series and films are the most popular programmes among the Greek people) as well as foreign children's programmes predominated over the domestic ones.

Moreover, it should be said that ET-1 encompassed in its programme schedule some broadcasts which had drawn their subject from the national culture. Documentaries, other information broadcasts and music programmes are some examples. A very good example, which might be emulated by other channels, was the transmission of a serial devoted to the life of the Kostis Palamas, a well known Greek poet.

With respect to the origin and type of programmes shown during prime time (8:00 pm - 11:00 pm)<sup>284</sup> and peak time (10:00 pm - 10:30 pm),<sup>285</sup> it seems that ET-1 does not follow any particular policy. Prime time and peak time was sometimes filled only with domestic programmes - mostly news, information broadcasts, games and sports

---

<sup>284</sup> AGB Hellas.

<sup>285</sup> AGB Hellas.

- and at other times it included a foreign film or foreign series. Finally, as regards the origin of foreign programmes broadcast on ET-1, we can say that most of them were American.

Let us now examine the second public channel, ET-2. In March 1993, ET-2 broadcast 428 hours. Greek programmes comprised 281 hours, namely 65,6% and foreign programmes 147, namely, 34,3% of total broadcasting time. As regards particular programme categories, the percentages of domestic and foreign programmes (counted again on the basis of total broadcasting hours, that is 428 hours) were as follows:

	Total Hours	Percent.	Greek Hours	Percent.	Foreign Hours	Percent.
News	38	8,87%	38	8,87%	-	-
Sports	28	6,54%	28	6,54%	-	-
Game shows - Light Entertainment	2	0,46%	2	0,46%	-	-
Information broadcasts	112	26,16%	92	21,49%	20	4,67%
Educational broadcasts <sup>286</sup>	30	7%	30	7%	-	-
Religious broadcasts	2	0,46%	2	0,46%	-	-
Music	25	5,84%	18	4,2%	7	1,64%
Children's programmes	34	7,94%	4	0,94%	30	7%
Theatre	12	2,8%	12	2,8%	-	-
Series - Soap operas	54	12,61%	7	1,63%	47	10,98%
Films	91	21,26%	48	11,21%	43	10,05%

On the basis of the total broadcasting hours devoted to each of the programme categories, the percentages of domestic and foreign programmes were as follows:

	Total Hours	Greek Hours	Percent.	Foreign Hours	Percent.
News	38	38	100%	-	-
Sports	28	28	100%	-	-
Game shows - Light Entertainment	2	2	100%	-	-

---

<sup>286</sup> It is very likely that some of the educational broadcasts were foreign productions. However, since the origin of each of these educational programmes was not available, all of them have been considered Greek.

Information broadcasts	112	92	82,14%	20	17,85%
Educational broadcasts	30	30	100%	-	-
Religious broadcasts	2	2	100%	-	-
Music	25	18	72%	7	28%
Children's programmes	34	4	11,76%	30	88,23%
Theatre	12	12	100%	-	-
Series - Soap operas	54	7	12,96%	47	87,03%
Films	91	48	52,74%	43	47,25%

Our comments on ET-2's programming will be similar to those on ET-1. While, in general, the share of Greek programmes broadcast on ET-2 was higher than that of foreign programmes, foreign productions prevailed in the two programme categories of series - soap operas and children's programmes. However, unlike what happened in ET-1, in ET-2 the percentage of Greek films was higher than that of foreign films, which is quite encouraging. ET-2 also transmitted some cultural broadcasts, particularly programmes referring to national art and music. With respect to prime time and peak time, on most days, prime time was filled with both Greek - mostly news, information broadcasts, music and sports - and foreign programmes (documentaries, films, series). On the contrary, peak time was mostly covered by Greek programmes. Finally, it seems that ET-2's foreign programmes were more American than European. In particular, its series were mostly Brazilian and American.

As regards private broadcasting, 609 total hours were broadcast by Mega Channel in March 1993. In particular, Mega Channel broadcast 379 hours of Greek programmes, that is 62,24% of the above total broadcasting time, and 230 hours of foreign programmes, that is 37,76%. Examining the particular types of programmes, we have the following percentages of domestic and foreign programmes (calculated on the basis of the above total broadcasting hours, namely 609 hours).

	Total Hours	Percent.	Greek Hours	Percent.	Foreign Hours	Percent.
News	40	6,56%	40	6,56%	-	-
Sports	51	8,37%	44	7,22%	7	1,15%
Game shows - Light Entertainment	53	8,7%	53	8,7%	-	-

Information broadcasts	109	17,89%	109	17,89%	-	-
Educational broadcasts	-	-	-	-	-	-
Religious broadcasts	-	-	-	-	-	-
Music	0,46	0,075%	-	-	0,46	0,075%
Children's programmes	31	5,09%	1	0,16%	30	4,93%
Theatre	-	-	-	-	-	-
Series - Soap operas	138	22,66%	59	9,69%	79	12,97%
Films	186	30,54%	73	11,99%	113	18,55%

On the basis of the total broadcasting hours covered by each programme category, the percentages of Greek and foreign programmes were as follows:

	Total Hours	Greek Hours	Percent.	Foreign Hours	Percent.
News	40	40	100%	-	-
Sports	51	44	86,28%	7	13,72%
Game shows - Light Entertainment	53	53	100%	-	-
Information broadcasts	109	109	100%	-	-
Educational broadcasts	-	-	-	-	-
Religious broadcasts	-	-	-	-	-
Music	0,46	-	-	0,46	100%
Children's programmes	31	1	3,23%	30	96,77%
Theatre	-	-	-	-	-
Series - Soap operas	138	59	42,75%	79	57,25%
Films	186	73	39,25%	113	60,75%

From the tables it is obvious that the largest part of Mega Channel's programme schedule was filled with series, information broadcasts and game shows. There were no educational, religious and music programmes. The proportion of 0,075 which refers to music programmes, was actually 28 minutes of classical music for the whole month. Information broadcasts embraced talk shows and other information programmes but not documentaries. Also, there were no special cultural broadcasts except some films or series which may have had a Greek theme. We also note that of children's programmes, series and films, foreign productions held higher percentages than domestic ones. In relation to the origin of the channel's foreign programmes, we can say that they were mostly American. Finally, prime time and peak time was constantly covered by Greek

programmes - mostly news, series and game shows - with the exception of Sunday since a part of that day's prime time and the whole of peak time was filled with a foreign film.

Antenna, the other surveyed private channel, broadcast 575 hours in March 1993. In particular, 375 of them were covered by Greek programmes, that is 65,22% of total broadcasting time, and 200 were foreign programmes, that is 34,78% of total broadcasting time. The percentages of Greek and foreign programmes (based on the above total broadcasting time, namely, 575 hours), in relation to programme categories, were as follows:

	Total		Greek		Foreign	
	Hours	Percent.	Hours	Percent.	Hours	Percent.
News	55	9,56%	44	7,65%	11	1,91%
Sports	14	2,43%	14	2,43%	-	-
Game shows - Light Entertainment	42	7,3%	36	6,26%	6	1,04%
Information broadcasts	178	30,95%	178	30,95%	-	-
Educational broadcasts	-	-	-	-	-	-
Religious broadcasts	-	-	-	-	-	-
Music	-	-	-	-	-	-
Children's programmes	25	4,34%	4	0,69%	21	3,65%
Theatre	-	-	-	-	-	-
Series - Soap operas	111	19,3%	48	8,35%	63	10,95%
Films	150	26,08%	51	8,87%	99	17,21%

On the basis of the total broadcasting time covered by each programme category, we have the following percentages of Greek and foreign programmes:

	Total	Greek		Foreign	
	Hours	Hours	Percent.	Hours	Percent.
News	55	44	80%	11	20%
Sports	14	14	100%	-	-
Game shows - Light Entertainment	42	36	85,71%	6	14,29%
Information broadcasts	178	178	100%	-	-
Educational broadcasts	-	-	-	-	-
Religious broadcasts	-	-	-	-	-
Music	-	-	-	-	-
Children's programmes	25	4	16%	21	84%



Theatre	-	-	-	-	-
Series - Soap operas	111	48	43,24%	63	56,76%
Films	150	51	34%	99	66%

The profile of Antenna's programming is the same as that of Mega Channel's. Most broadcasting time was filled with information broadcasts, series, films and game shows. There were no educational, religious, and music programmes or cultural broadcasts with the exception of series or films whose subject matter may have been Greek. For instance, Antenna broadcast a series whose subject was the life of Eleutherios Venizelos, a Prime Minister of Greece at the beginning of the century, who played a significant role in Greek politics. The programme category of information broadcasts did not include documentaries, but only talk shows, current affairs and other information programmes. In addition, while, in general, the percentage of Greek programmes was higher than that of foreign programmes, in the programme categories of series - soap operas, films and children's programmes, foreign productions predominated over the domestic ones. Also, the foreign programmes were mostly American. Finally, prime time was covered by Greek programmes - mostly news, series, films and game shows - except Sunday and Monday when prime time included some minutes of a foreign film. Peak time was also filled with Greek programmes (series and films) except Sunday; on Sundays, peak time was filled in part by a foreign film.

The profile of Greek television would be inadequately presented if no reference was made to the quality of its programmes. Therefore, with respect to that issue, it can be said that the quality level of Greek television's programmes is rather low and disappointing. They simply lack originality, creativity and artistry.<sup>287</sup> Private television, in particular, follows the "American model" in terms of organization of programme zones and content of programmes. One can notice a sterile copy of some American broadcasts. Game shows, light entertainment and morning talk shows is the

---

<sup>287</sup> P. Diamadakou, "Ei Paramorphoseis tis TV" *Kathemerini* (28 February 1993) 24.

result of a strong influence from the American television. In addition, series are made with the participation of actors and actresses chosen from the same group of twenty to twenty-five people, and the regular guests of the talk shows (referring to politics) are ten to fifteen politicians, representatives of the government and the opposition. Soap operas and low quality broadcasts have formed a large part of Greek television. Broadcasts of high quality constitute only an exception.<sup>288</sup> On the other hand, the public broadcaster (ERT AE), in an attempt to compete with private channels in terms of viewership, ended up lowering the quality of its programmes, changing its programme zones and losing a large percentage of its viewers.<sup>289</sup> Nevertheless, the profile of public television is much better than that of private channels. Its programmes are more diversified and qualitatively better. Only public television seems to waver between a commercial and a non-commercial television broadcasting policy.

Finally, Greece has one pay channel, TV Plus. TV Plus shows new films during the day and repeats two of them in the late-night programme zone, while on the weekends it adds two or three.<sup>290</sup> Nonetheless, TV Plus does not broadcast any Greek films; instead, the majority of the films shown is of American origin.<sup>291</sup> TV Plus's Director-Councillor, Daniel Bourlas, explains: "The American cinema companies promote "packages" - good and bad quality films. From 140 titles, I choose from 60 to 70. I like European films, but it is difficult to bargain with Europeans. Americans are professional, methodical, consistent ..." <sup>292</sup> He makes no comment about domestic cinema productions.

---

<sup>288</sup> *Ibid.*

<sup>289</sup> Paul Sklavos, "Kratiki Radiotileorasi, Thesmiko Plaisio, Programmatismos. Programma Kai Kratiki Radiophoniki Stathmi" (Address to the B' Pan-Hellenic Conference on the Mass Media, Athens, 17 June 1993) [unpublished].

<sup>290</sup> E. Zapholia, "Kanali Syndromiton. 'Videoclub' Polytelias" TV Zaping of 17 April 1992, no 5, at 35.

<sup>291</sup> *Ibid.*

<sup>292</sup> *Ibid.*

In summarizing, we can say that the current Greek reality in the field of television broadcasting is characterized by the proliferation of television channels, the increase in their transmission time, the dominance of foreign productions in certain types of programmes, the lack of variety in private channels' programme schedule and often low quality of programming. Generally speaking, it does not appear that there is a problem about Greek content programmes. Nevertheless, when it comes to programme categories, the percentages of foreign series - soap operas, films and children's programmes (programme categories which attract large audiences) are higher than those of domestic ones. Still, Greek productions hold high audience ratings, which is, indeed, a quite positive element of the Greek television broadcasting situation. One finds some European productions on public channels but very rarely on private channels. The lack of educational, music and cultural programmes contrast with the abundance of game shows, light entertainment and talk shows as another characteristic of private television. Private channels, however, following a commercial policy based on the home-viewers' preferences, try to raise the percentage of domestic drama<sup>293</sup> and constantly broadcast it during prime time with the purpose of increasing viewership. Their policy is based on market demands and not on national or other criteria. If the viewers' choices change, private channels will alter their policy and reschedule their programming. On the other hand, public channels do not seem to complete and remedy satisfactorily the gaps in private channels' programme schedule. In general, Greek television lacks an adequate percentage of high quality programming, of domestic drama, children's programmes and other broadcasts which will maintain and promote the national culture and language.

The foregoing discussion allows one to draw the conclusion that Greek television needs to adopt, in the field of television broadcasting, a Greek content policy with emphasis on cultural programmes. It is time that it creates a strategy for more Greek content programmes which will preserve and enrich the national culture and protect the

---

<sup>293</sup> The term "drama" will be used from now on as a programme category which includes series, serials, soap-operas and films - cinema films or films made for television.

Greek language. The Greek government should recognize the important role that television can play in the cultural field. Television and other cultural industries have an economic as well as a cultural dimension. On the one hand, they produce and distribute products and services similar to those produced by other consumer product industries. On the other hand, they play a significant role in the shaping of social conscience, for they represent certain "life-models".<sup>294</sup> Television is a pervasive medium which has access to a large audience with the appeal of person to person communication.<sup>295</sup> It is a powerful means of information and entertainment, which can influence attitudes, shape opinions, represent and spread national and cultural values and traditions. As has been pointedly explained, "television tells stories, drawing on and expanding ... ancient traditions which have their roots in myth. There is a great hunger for stories, and the tales told on television satisfy a deep need, the pleasure of listening, of letting oneself be carried away (in a "suspension of disbelief") by the flow of the story; but at the same time these stories are about us, or rather about the society and culture they spring from ... [Such] fiction [is] very useful for understanding and deciphering values, expectations, attitudes, dreams and fears, ways of seeing the world, which at any one time go to make up the cultural entity of a society."<sup>296</sup> This role of television must not be ignored or underestimated. In particular, the technological advances in the field of broadcasting, especially cable and satellite systems, and the European regulatory scheme on transfrontier television have abolished national borders. Television broadcasts are now becoming accessible worldwide. This can be seen as a threat for small countries, like Greece, with a low capacity for producing domestic programmes and a language that is not widely spoken, taking also into consideration the increase in channels' broadcasting time and the fact that Greeks spend at least three hours daily watching television. If the

---

<sup>294</sup> *Supra*, note 125 at 32.

<sup>295</sup> M. Finkelstein, "The Charter and the Control of Content in Broadcast Programming" in N.R. Finkelstein & B.M. Rogers eds, *Charter Issues in Civil Cases*, (Toronto: Carswell, 1988) at 232.

<sup>296</sup> J.G. Blumler, ed., *Television and the Public Interest: Vulnerable Values in West European Broadcasting*, (London-New Delhi: Sage Publications, 1992) at 33.

channels are inundated with foreign programmes which reflect another lifestyle and another culture, the question raised is how we will preserve our cultural or national identity. One could argue that there are other ways to maintain a culture instead of regulating a cultural policy for broadcasting. However, television is a collective, popular and inexpensive means of communication and entertainment, and therefore can constitute an essential part of a country's attempt to protect and enrich its own culture. In my opinion, it is the cultural dimension of television which must be underscored and paid attention to. Television broadcasts must be seen primarily as cultural goods important for the self-development and orientation of a country's people.

At this point I consider it necessary to explain that any suggestion for issuing a broadcasting policy of more Greek content (especially cultural) programmes must not be interpreted as an attempt to prevent people from watching television programmes from any other part of the world or to impede the entry of any foreign cultural element in the country. A broadcasting policy certainly does not and cannot oppose technological developments in the field of television broadcasting. Viewers' preference should also be taken into consideration. What I propose is the creation of an approach to television which, apart from a percentage of foreign programmes, will inform the home audience about what is happening nationally and internationally, about social and political matters from the domestic standpoint, and which via drama and other programme categories will give insight into the creative condition of the country, portray themes relevant to the national life and make the home audience conscious of its history, culture and traditions. That would mean an increase in national production, promotion of national creative arts and journalism and support for employment in the field of television broadcasting.<sup>297</sup> With increased cultural and linguistic consciousness, Greece will be able to face the free flow of foreign productions and participate in satellite or other European television programmes. Besides, it is the domestic programmes which Greeks mostly favour. Why

---

<sup>297</sup> A. Pragnell, *Television in Europe. Quality and Values in a Time of Change*, (Manchester: The European Institute of the Media, 1985) at 15.

not provide them with more and qualitatively better Greek content programmes protecting and promoting at the same time their culture and language?

## SECTION F: Conclusion

Greek television was developed to be mostly politically sympathetic to the government of the day rather than culturally conscious. It was under the socialist regime that the Greek government attempted to protect the national culture and change the profile of Greek television. What was accomplished was an increase in Greek programmes, whose quality, however, was rather disappointing, and a diversification of foreign programmes, which were qualitatively better and continued to inundate television channels. The new law, Act 1866/89, introduced private television and promised independence from the government intervention in the field of television broadcasting by establishing NCRT (National Council of Radio and Television), an independent public authority, which will exercise "state control" over both private and public channels. For the first time, the state monopoly was abolished, and a different broadcasting system was established, namely, the coexistence of public and private channels governed by Act 1730/87 and Act 1866/89 correspondingly. Both channels have the same obligations with respect to the content of programmes. The principle of quality has been emphasized in Greek legislation, starting with the country's Constitution. In addition, Article 3 of Act 1730/87, which applies to both state-owned and private channels, lays down, *inter alia*, the principle of maintenance and promotion of Greek culture and language, which should govern broadcasts. Nevertheless, no particular measures have been adopted for the fulfilment of this principle. It is true that the overall share of Greek programmes on public and private (at least on Mega Channel and Antenna, the two most popular channels in Greece) channels is higher than that of foreign programmes. Also, Mega Channel and Antenna, pursuing a commercial policy and corresponding with the national taste, have started to include in their programming time more Greek programmes and even schedule them during prime time. When it comes, however, to certain programme categories the profile is reversed. Dominance of foreign drama and children's

programmes as well as lack of a satisfactory percentage of broadcasts which would preserve the cultural identity and language are its characteristics. The transmission of rather low quality broadcasts as well as a shortage of programme diversity on private channels are some other characteristics of Greek television. Since television is a popular (at least in Greece) and powerful means of providing information and entertainment, and is a vehicle for the development, protection and propagation of a national culture, I would stress the need for the adoption of a policy which will increase the Greek content. In particular, such a policy would apply to programme categories where foreign productions prevail, such as drama, would put emphasis on the protection of the national culture and language, would promote diversity and quality of programming, and make progress toward a strong and independent public broadcaster, achieving more accountability and effectiveness through a truly independent NCRT. Therefore, public and private broadcasters will have to carry out certain mandates, which must be carefully formulated in order to accomplish a successful implementation of the new television broadcasting policy. However, before we decide what that policy and the mandates for the broadcasters should be, it is necessary to understand the European legislative framework, since Greece is a Member-State of the European Community, and that has an impact on any policies adopted. It will also be helpful to look at the models and experience of other countries, which may face the same problems as Greece in the area of television broadcasting. These will be the subjects of the following two chapters of the thesis.

## CHAPTER 2: THE EUROPEAN LEGAL FRAMEWORK OF TELEVISION BROADCASTING

### SECTION A: Council Directive 552/89/EEC

#### Part I: The Rationale of the Directive

The European Community views television activities as services within the meaning of Articles 59 to 66 of the Treaty establishing the European Economic Community (EEC Treaty).<sup>1</sup> In the *Sacchi* case, the European Court of Justice held that "in the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services".<sup>2</sup> The Court also accepted that the service was remunerated and stated that "the transmission of television signals, including those in the nature of advertisements come, as such, within the rules of the Treaty relating to services".<sup>3</sup> In the *Debauve* case the Court added: "there is no reason to treat the transmission of such signals by cable television any differently".<sup>4</sup> The same can be said for the transmission of television signals via satellite. The goal, namely the provision of services, is the most important, not the means of transmission.<sup>5</sup> Therefore, according to Articles 59 and 62 of the EEC Treaty, restrictions on the freedom to provide broadcasting services must be abolished, and new restrictions on the said freedom are prohibited. Broadcasters are entitled to transmit their signals to other

---

<sup>1</sup> *Treaty Establishing the European Economic Community*, 25 March 1957, 298 U.N.T.S. 11 (1958) [hereinafter EEC Treaty].

<sup>2</sup> *Italy v. Sacchi* (No. 155/73), [1974] 2 CMLR 177, [1974] ECR 409, at 428.

<sup>3</sup> *Ibid.* at 432.

<sup>4</sup> *Procureur du Roi v. Debauve* (No. 52/79), [1980] ECR 853 as it appears in Van Empel, M. et al., eds., *Leading Cases on the Law of the European Communities*, 5th ed. (Deventer: Kluwer Law and Taxation Publishers, 1990) at 445.

<sup>5</sup> I.E. Schwartz, "Broadcasting and the EEC Treaty" (1986) 11 *European Law Review* 7, at 16.



Member States, and the nationals of those Member States can capture them.<sup>6</sup> In addition, in the *Sacchi* case, the European Court stated that "trade in material, sound recording, films, apparatus and other products used for the diffusion of television signals is subject to the rules relating to freedom of movement for goods".<sup>7</sup> Moreover, broadcasting organizations are considered undertakings within the meaning of the competition rules of the EEC Treaty (Arts. 85-90).<sup>8</sup> The Treaty guarantees them the freedom to compete, and it prohibits agreements that may restrict competition as well as abuse of a dominant position, which may effect trade between Member States (Arts. 85, 86). Broadcasters as self-employed persons, whether they are natural or legal ones, companies with or without legal personality, associations, co-operatives or foundations, public-law or private-law organizations, are subject to the EEC Treaty's provisions relating to freedom of establishment (Arts. 52-58).<sup>9</sup> Finally, the EEC Treaty guarantees freedom of movement within the Community to people who work as employees for broadcasting organizations (Art. 48).<sup>10</sup>

We can see from the above that television broadcasting is a subject-matter which comes within the EEC Treaty provisions relating to competition, free movement of persons, free movement of goods, freedom of establishment and freedom to provide services. Nevertheless, the European Community recognized that the provisions of the EEC Treaty alone cannot sufficiently regulate a matter with significant economic and cultural dimensions such as television broadcasting. Certain events created the need for

---

<sup>6</sup> *Ibid.* at 8.

<sup>7</sup> *Supra*, note 2 at 432.

<sup>8</sup> *Supra*, note 5 at 9. Charles-Etienne Gudin, "Existe-t-il un Marché Européen de la Télévision? Réglementations Nationales et Droit Communautaire: l'Exemple de la France" (1990) *Revue des Affaires Européennes* 25, at 27.

<sup>9</sup> *Supra*, note 5 at 8.

<sup>10</sup> *Supra*, note 5 at 9.

more determined actions to be taken and led to the adoption of Directive 552/89.<sup>11</sup> In particular, until the early 1980's, television was a means of communication limited in capacity and space because of the curvature of the earth and the scarcity of radio frequencies. In the best of cases television just covered national territories. In addition, most countries had few television channels.<sup>12</sup> However, the situation was changed drastically with the emergence of cable systems and satellite services. Television programmes began to spill across borders.<sup>13</sup> Direct broadcasting from satellites is a recent development which actually has no frontiers. Programmes can be transported over large distances.<sup>14</sup> Moreover, the system of government-controlled broadcasting monopolies was considered obsolete. Private broadcasting entities were accepted and the majority of European countries reformed their broadcasting legislation.<sup>15</sup> Deregulation, the availability of new Hertzian frequencies and the rapid and significant technological developments resulted in an enormous proliferation of television channels throughout Europe and in an increase in the programming time and in the demand of programmes.<sup>16</sup> While morning television was considered an American phenomenon, now morning shows are beginning to be broadcast in some European nations.<sup>17</sup> In 1998, the annual demand for programmes is likely to be 535,000 hours instead of

---

<sup>11</sup> Council Directive No. 552 of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, O.J. Eur. Comm. (No. L 298) 23 (1989).

<sup>12</sup> F.W. Hondius, "Regulating Transfrontier Television - The Strasbourg Option" (1988) 8 Yearbook of European Law 141 at 146.

<sup>13</sup> *Ibid.*

<sup>14</sup> K.L. Wilkins, "Television Without Frontiers: An EEC Broadcasting Premiere" (1991) 14:1 Boston College Intern. and Comp. L. Rev. 195, at 197.

<sup>15</sup> *Supra*, note 12 at 146-147.

<sup>16</sup> E. Orf, "Television Without Frontiers - Myth or Reality?" (1990) 12 European Intellectual Property Review 270 at 270.

<sup>17</sup> N.C.M. Peck, "Transfrontier Television and Europe 1992: A Common Position?" (1990) 4:2 Temple Intern. and Comp. L.J. 307 at 353.

325,000 hours in 1989. According to the de Vries Report, the programme industry in Europe will have to produce from 75,000 to 125,000 hours of material.<sup>18</sup> Therefore, the Community programme industries have to be more productive. Television channels need to fill their transmission time with productions which are available at low prices and can attract large audiences in order to obtain the advertising revenue necessary for their survival.<sup>19</sup> Since that does not exist in Europe, broadcasters have recourse to the United States, a source of relatively inexpensive and plentiful productions, easily accessible and with a large audience share.<sup>20</sup> As a consequence, Europe has been a major market for American production companies. According to a report of the New York research firm of Frost and Sullivan, by 1992 U.S. television distributors expected to receive \$2.7 billion from Western Europe, up from \$844 million in 1988.<sup>21</sup> Other estimates show that only 8% of European broadcasters' transactions concerning programme acquisition refer to internal European exchanges. Four-fifths of programme exchange transactions conducted with European partners consisted in the obtainment of U.S. programmes. In 1986, American programmes represented, on average, 44% of the imports in Europe and gathered, on average, 40% of the audience.<sup>22</sup> This situation spread within the European Community the fear of economic and cultural dependence. The European Parliament, in its Resolution of October 1985, explained that the Community market was dominated by non-documentary television programmes originating in the United States, and that the viewers' appetite required that the Member States produce annually 20 to 25 times more non-documentary programmes. If the Community broadcasting organizations were not able to meet this need, they would end

---

<sup>18</sup> R. Negrine and S. Papathanassopoulos, *The Internationalization of Television* (London-New York: Pinter Publishers, 1990) at 68.

<sup>19</sup> M. Maggiore, *Audiovisual Production in the Single Market*, (Luxembourg: Office for Official Publications of the European Communities, 1990) at 46.

<sup>20</sup> *Ibid.* at 45.

<sup>21</sup> *Supra*, note 17 at 340.

<sup>22</sup> *Supra*, note 19 at 45.

up filling their airtime with programmes made in non-Community countries.<sup>23</sup> The latter would have cultural and economic consequences, that is, "an increase in Community countries' cultural dependence, a deterioration in their balance of payments and increased unemployment among those who seek to work in the cultural sector".<sup>24</sup> In addition, the Commission, in its Green Paper, stated that "the creation of a common market for television production is ... one essential step if the dominance of the big American media corporations is to be counterbalanced".<sup>25</sup>

Council Directive 89/552/EEC, which regulates cross-frontier television broadcasting, is one of the Community's actions aimed at the creation of that common market. In the Green Paper,<sup>26</sup> the Commission supported the right of cross-frontier broadcasting giving many reasons. Firstly, the Commission explained that the said right will contribute to the process of European integration. "The dissemination of information across national borders can do much to help the peoples of Europe to recognize the common destiny they share in many areas".<sup>27</sup> Secondly, broadcasting, in general, is an important sector of the Community's service economy. "It constitutes one of the main factors accelerating the transition to an economy that will in large part be based on ready access to information and to rapid methods of communication".<sup>28</sup> Thirdly, cross-frontier broadcasting will give the motivation for a technical innovation in Europe as

---

<sup>23</sup> *Resolution embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Regulation on a Community aid scheme for non-documentary cinema and television coproductions*, O.J. Eur. Comm. (No. C 288) 30 (1985), at 30.

<sup>24</sup> *Ibid.*

<sup>25</sup> C.A. Giffard, "European Regulation on Transborder Television" (1990) 27 California Western L. Rev. 159 at 167.

<sup>26</sup> *Television Without Frontiers, Green Paper on the establishment of the Common Market for broadcasting, especially by satellite and cable*, COM (84) 300 final/2.

<sup>27</sup> P. Presburger and M.R. Tyler, "Television Without Frontiers: Opportunity and Debate Created by the New European Community Directive" (1990) 31 Hastings Intern. and Comp. L. Rev. 495 at 496.

<sup>28</sup> *Supra*, note 26 at 2.

regards transmission media and will prevent the "dominance of the big American media corporations".<sup>29</sup> Fourthly, cross-border transmissions will constitute "a source of cultural enrichment".<sup>30</sup>

The purpose of the Directive is to contribute to the creation of a common market for television as well as to maintain a European cultural identity. This is to be achieved by harmonizing the national legislation of the Member States for the free circulation of broadcasts within the Community, thus supporting a trans-European television industry composed of Community-produced programming.<sup>31</sup> Economic and cultural concerns are linked in the Directive. Its preamble stated that "coordination is ... needed to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities".<sup>32</sup> In this regard, "minimum requirements ... have been a means of promoting production, independent production and distribution ...".<sup>33</sup> In addition, "it is necessary to promote markets of sufficient size for television productions in the Member States" so that they can "recover necessary investments". Therefore, the European Community must establish "common rules opening up national markets" and envisage a majority proportion of European production in the television

---

<sup>29</sup> *Supra*, note 27 at 497. With respect to American productions, the European Community is being protectionist, which actually seems impossible in the context of international transactions. The Community's protectionist policy, however, is driven by cultural concerns. The U.S. reacted to this protectionism accusing the European Community of violating GATT, arguing, inter alia, that the cultural sector is not exempted from GATT's principles ("Kai Optikoacoustiki Ebloki IPA - Europis" [*Montreal/Ellinikos Tahidromos* (26 November 1992) 4.]). On the contrary, according to Articles 2005 and 2012 of the Free Trade Agreement between Canada and U.S., the cultural industry, including broadcasting, is exempted from this agreement. (W.L. Northcote, "The Treatment of Culture and Cultural Industries Under the Canada - U.S. Free Trade Agreement and in the European Community" (1992) 2 M.C.L.R. 27 at 33).

<sup>30</sup> *Supra*, note 27 at 496.

<sup>31</sup> T.M. Lupinacci, "The Pursuit of Television Broadcasting Activities in the European Community: Cultural Preservation or Economic Protectionism?" (1991) 24:1 *Vanderbilt J. of Transnational Law* 113 at 120.

<sup>32</sup> *Supra*, note 11 at 24.

<sup>33</sup> *Ibid.*

programme schedules of all Member States.<sup>34</sup> The situation, however, of countries "with a low audio-visual production capacity or restricted language area" should be taken into consideration.<sup>35</sup> Finally, the preamble states that the Directive "lays down the minimum rules needed to guarantee freedom of transmission in broadcasting: .... therefore it does not affect the responsibility of the Member States and their authorities with regard to the organization - including the systems of licensing, administrative authorization or taxation - financing and the content of programmes: ... the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community therefore remain unaffected."<sup>36</sup> Consequently, while implementing the Directive, a Member-State can pursue a cultural policy in order to protect and enrich its national culture and, in this way, contribute to the maintenance of the Community's cultural diversity.

## Part II: The Main Principles of the Directive

Before we discuss the main principles of Directive 552/89,<sup>37</sup> it must be mentioned again that the Directive applies to cross-border television programmes throughout the European Community. Article 2(3) states that the Directive does not apply "to broadcasts intended exclusively for reception in States other than Member States, and which are not received directly or indirectly in one or more Member States". The broadcasts must not be received in any of the Member-States, not even in the originating Member-State, which actually restricts the scope of the exemption.<sup>38</sup> Moreover, all broadcasts which are not intended exclusively for reception in a non-

---

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Supra*, note 11.

<sup>38</sup> E.R. Sahpekidou, *Eleftheri Kikloforia Tileoptikon Ipiresion stin Europaiki Iconomiki Kinotita*, (Thessaloniki: Sakkoula Publications, 1990) at 118.

Member State must abide by the provisions of the Directive even if they are not cross-border broadcasts. The fact that for the time being a broadcast produced and transmitted in a Member-State is not received in any other Member-State has no importance. This broadcast must also comply with the Directive. Only the initial proposed Directive made a distinction between internal and cross-border broadcasts.<sup>39</sup> Finally, the Directive, in its Article 1(a), defines "television broadcasting" as "the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public". In other words, the Directive also applies to cable and satellite television.

Directive 552/89 is based on two fundamental principles: the first is the free circulation of television broadcasts within the Community. The second concerns the European television programme production and is guided by cultural objectives.<sup>40</sup>

With respect to the first principle, Article 2(2) imposes on the Member States the legal obligation "to ensure freedom of reception" and "not to restrict retransmissions on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive". This is the provision that ensures freedom of movement within the European Community for broadcasts originating in the Member States and, therefore, compels a Member State to refrain from any discrimination against broadcasts coming from other Member States. Television broadcasts, however, must, firstly, abide by the legislation of the originating Member State. Article 2(1) stipulates that each Member State must ensure that television broadcasts transmitted by broadcasters under its jurisdiction or by broadcasters who, even though they are not under the jurisdiction of any Member State, "make use of a frequency or a satellite capacity granted by, or a satellite up-link situated in, that Member

---

<sup>39</sup> *Ibid.* at 125.

<sup>40</sup> *Supra*, note 19 at 33.

State" comply with its national broadcasting law. Secondly, television broadcasts must comply with the provisions of the Directive. Article 3(2) provides that Member States must "by appropriate means, ensure within the framework of their legislation, that television broadcasters under their jurisdiction comply with the provisions of this Directive". Therefore, it is the law of the originating Member State which prevails.<sup>41</sup> A Member State cannot restrict reception or retransmission of broadcasts coming from other Member States on the ground that they do not comply with its national law.<sup>42</sup> Once a programme is compatible with the legislation of the originating Member State, it must be accepted throughout the Community.<sup>43</sup> As a consequence, the receiving State is obliged to accept in its territory television broadcasts which may comply with rules stricter or less strict than its own.<sup>44</sup> Nevertheless, pursuant to Article 2(2) of the Directive, the receiving State may provisionally suspend retransmissions of television broadcasts which infringe the Directive's provisions concerning the protection of minors.

With respect to the second main principle of the Directive, Articles 4 and 5 establish a quota system for the European television production and express the cultural objectives of the Directive. Article 4(1) provides that "Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services". This proportion should be achieved "progressively, on the basis of suitable criteria", having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public.<sup>45</sup> If the required proportion cannot

---

<sup>41</sup> *Supra*, note 11 at 24.

<sup>42</sup> Gudín, *supra*, note 8 at 31.

<sup>43</sup> *Supra*, note 19 at 33.

<sup>44</sup> *Supra*, note 17 at 316. Gudín, *supra*, note 8 at 31.

<sup>45</sup> *Supra*, note 11, art. 4(1).



be achieved, it must not fall below the average of 1988 in the Member State concerned.<sup>46</sup> As regards, in particular, the Hellenic Republic and the Portuguese Republic, because of their extremely small broadcast production capacity,<sup>47</sup> the year 1988 was replaced by the year 1990.<sup>48</sup> The objective of this provision was probably to provide these countries with a period of time during which they should try to raise and stabilize the percentage of European programmes since the 1988 proportion of those programmes was probably very low.

Article 5 requires that the Member States ensure, where practicable and by appropriate means, "that broadcasters reserve at least 10% of their transmission time - excluding news, sports events, games, advertising and teletext services - or alternatively, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters". The required proportion should be fulfilled "progressively, on the basis of suitable criteria" and by "earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production".<sup>49</sup> According to the preamble of the Directive, the quota requirement for independent productions "will stimulate new sources of television production, especially the creation of small and medium-sized enterprises", and "it will offer new opportunities and outlets for the marketing of creative talents of employment of cultural professions and employees in the cultural field".<sup>50</sup>

Article 4(3) requires that Member States provide the Commission every two years with a report concerning the application of Articles 4 and 5. The report must include,

---

<sup>46</sup> *Supra*, note 11, art. 4(2) first para.

<sup>47</sup> *Supra*, note 17 at 326, footnote 114.

<sup>48</sup> *Supra*, note 11, art. 4(2) second para. In fact, Greece did not take advantage of this provision of the Directive.

<sup>49</sup> *Supra*, note 11, art. 5.

<sup>50</sup> *Supra*, note 11 at 25.

in particular, a statistical statement on the achievement of the proportion and, in case of failure to attain that proportion, the reasons and the measures adopted or envisaged in order to achieve it. Moreover, Article 4(3) provides that the Commission must inform the other Member States and the European Parliament of the reports, which can be accompanied, where appropriate, by an opinion.

Article 4 is the most controversial one of the Directive. Before we discuss it, we should attempt to comprehend the meaning of "European works" in accordance with Article 6.

The Directive defines "European works" as a) works originating from Member States and, as regards "television broadcasters falling within the jurisdiction of the Federal Republic of Germany, works from German territories where the Basic Law does not apply",<sup>51</sup> b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe<sup>52</sup> and c) works originating from other European third countries.<sup>53</sup> As regards the first two categories, the works are those "mainly made with authors and workers residing" in one or more of those states provided that they comply with one of the following three conditions<sup>54</sup>: a) the works are made by one or more producers established in one or more of the above mentioned States; or b) one or more of these producers "supervises or actually controls" production of the works; or c) if it is a co-production, the co-producers of the above mentioned States contribute a preponderance of the total co-production costs and "the co-production is not controlled by one or more producers established outside those

---

<sup>51</sup> *Supra*, note 11, art. 6(1)(a). The special reference to Germany is no longer relevant after unification.

<sup>52</sup> *Ibid.* art. 6(1)(b).

<sup>53</sup> *Supra*, note 11, art. 6(1)(c).

<sup>54</sup> *Supra*, note 11, arts. 6(1)(a), (b) and 6(2).

States".<sup>55</sup> As regards the third category, the works are those "made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community will conclude agreements in accordance with the procedures of the Treaty, if those works are mainly made with authors and workers residing in one or more European States".<sup>56</sup> Finally, in accordance with Article 6(4), works which are made mainly with authors and workers residing in one or more Member States and are not European works within the meaning of the first paragraph of Article 6, will be considered European works "to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs".

Many questions arise from Article 6. To begin with, Article 6 does not indicate whether the word "authors" includes the director, composer of the work as well as the writer, nor whether the word "workers" include all the crew or any of the most influential persons.<sup>57</sup> Moreover, it is not clear whether the phrase "mainly made" requires a certain number of persons or a certain contribution to the work.<sup>58</sup> In addition, the meaning of the phrase "producers established in one or more of those states" is not clear. When is a producer established in more than one of those States? Does the word "established" mean financial establishment, physical presence, ability to raise capital or something else?<sup>59</sup> Will a representative of an American company which does business in a Member State be deemed to be established in that Member State? The provision does not make any reference in respect to the control of the production company and the source of finance for the production. Can an American broadcaster

---

<sup>55</sup> *Supra*, note 11, arts. 6(2)(a)-(c).

<sup>56</sup> *Supra*, note 11, art. 6(3).

<sup>57</sup> C. Moore and D. St. John White, "European Television in the 1990s: Tuning Out American Producers?" (1990) 8 *The Entertainment and Sports Lawyer* 1 at 10.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Supra*, note 17 at 323.

establish a European subsidiary and make "European works" employing the required number of European personnel?<sup>60</sup> Another raised question concerns the meaning of "supervision" and "actual control" in Article 6(2)(b).<sup>61</sup> Also, this provision may require that a European production company supervises and actually controls the production of works. If however the "maker" of the work is an American production company, it is unlikely that it will leave the actual control to a European company with no financial contribution to the production.<sup>62</sup> Moreover, the Directive, in Article 6(2)(c), does not define the word "coproduction". It is not clear whether it refers only to the case where production companies share the responsibilities and costs of a production, or whether it also includes the case where a party pays for the programme but is not involved in the day-to-day production. The European Commission has drafted some suggested guidelines with the objective of assisting the Member States in their duty to monitor the application of the Directive. In relation to Article 6 of the Directive, the suggested guidelines do not really help us to answer the above questions. In particular, firstly the Commission notes that "in the case of Article 6 paragraph 3 and 6 paragraph 4 which refers to 'works which are mainly made with authors and workers residing in one or more European states', and in order to cope with borderline co-production cases, the rule of thumb is that over 50% of both creative and management staff and other production staff must be European residents".<sup>63</sup> Does this allow us to assume that, not only in co-production cases but also in general, what the Directive means by "authors" and "workers" is the creative and management staff and other production staff, which seems to include all the production crew? Secondly, the Commission explains that a producer will be considered established within a European State "if the company is an up and going concern which has a permanent staff (taking into account the specificities of the sector) involved in both

---

<sup>60</sup> *Supra*, note 57 at 10-11.

<sup>61</sup> *Supra*, note 17 at 323.

<sup>62</sup> *Supra*, note 57 at 11.

<sup>63</sup> Commission of the European Communities, "Suggested Guidelines for the Monitoring of the 'TV Without Frontiers' Directive", Amended Version 15.2.1993, at 2.

production and commercial operations at the EUROPEAN LOCATION".<sup>64</sup> [Emphasis in original]. It seems, therefore, that an American broadcaster could establish a European subsidiary and make "European works" employing European personnel. Finally, looking at the definition of "European works" in Article 6, we note that the determined criteria are the location of the production and the residence of authors and workers in certain European States and not the content of the production or cultural considerations. It seems, for example, that if "Dallas" was produced in France with the same scripts and in accordance with Article 6 of the Directive, it would be qualified as a 'European work'.<sup>65</sup> How does this help the preservation and promotion of Europe's cultural heritage? Nevertheless, the Member States, by implementing the Directive, will probably answer many of the above questions and will add their own definitions and requirements. A very good example is that of France. France, by implementing the Directive, has incorporated into its national law a definition of "European works" which, even though it does not initiate any cultural criteria, effectively closes the loopholes Article 6 appears to generate.<sup>66</sup> The definition, which really makes it difficult for a non-European programmer to produce "European works", reads as follows:

"I. Constituent des oeuvres cinématographiques ou audiovisuelles européennes:

- a) Les oeuvres originaires d'États membres de la Communauté économique européenne;
- b) Les oeuvres d'États tiers européens parties à la convention européenne sur la télévision transfrontière du Conseil de l'Europe,

qui répondent aux conditions suivantes:

- 1. D'une part, elles doivent être réalisées essentiellement avec la participation d'auteurs, d'artistes-interprètes, de techniciens collaborateurs de création résidant dans un ou plusieurs de ces États et avec le concours de prestations techniques réalisées dans des studios de prises de vues, dans les laboratoires ou studios de sonorisation situés dans ces mêmes États;
- 2. D'autre part, elles doivent:

---

<sup>64</sup> *Ibid.*

<sup>65</sup> S.M. Schwarz, "Television Without Frontiers?" (1991) 16 North Carolina J. of Intern. Law and Commercial Regulation 351 at 361.

<sup>66</sup> *Supra*, note 57 at 9.

- a) Soit être produites par une entreprise dont le siège est situé dans un des États susmentionnés et dont le président, directeur ou gérant ainsi que la majorité des administrateurs sont ressortissants d'un de ces États, à la condition que cette entreprise supervise et contrôle effectivement la production de ces oeuvres en prenant personnellement ou en partageant solidairement l'initiative et la responsabilité financière, technique et artistique de la réalisation des oeuvres considérées et en garantisse la bonne fin;
- b) Soit être financées majoritairement par les contributions de coproducteurs établis dans des États susmentionnés, à la condition que la coproduction ne soit pas contrôlée par un ou plusieurs producteurs établis en dehors de ces États.

Les entreprises et coproducteurs visés ci-dessus ne doivent pas être contrôlés, au sens de l'article 355-1 de la loi no 66-537 du 24 juillet 1966 susvisée, par un ou plusieurs producteurs établis en dehors de ces États.

II. Constituent en outre des oeuvres cinématographiques ou audiovisuelles européennes les oeuvres originaires d'États tiers européens avec lesquels la Communauté économique européenne a conclu un accord selon les procédures prévues par le traité du 25 mars 1957 susvisé qui répondent aux conditions suivantes:

- 1. D'une part, elles doivent être réalisées essentiellement avec la participation d'auteurs, d'artistes-interprètes, de techniciens collaborateurs de création résidant dans un ou plusieurs de ces États ou des États visés au I ci-dessus et avec le concours de prestations techniques réalisées dans des studios de prises de vues, dans des laboratoires ou studios de sonorisation situés dans ces mêmes États;
- 2. D'autre part, elles doivent:
  - a) Soit être produites exclusivement par une entreprise dont le siège est situé dans un de ces États tiers européens et dont le président, directeur ou gérant ainsi que la majorité des administrateurs sont ressortissants d'un de ces mêmes États, à la condition que cette entreprise supervise et contrôle effectivement la production de ces oeuvres en prenant personnellement ou en partageant solidairement l'initiative et la responsabilité financière, technique et artistique de la réalisation des oeuvres considérées et en garantisse la bonne fin;
  - b) Soit être coproduites par une entreprise répondant aux conditions mentionnées au 2 a ci-dessus avec un ou plusieurs coproducteurs établis dans des États membres de la Communauté économique européenne.

Les entreprises et coproducteurs visés ci-dessus ne doivent pas être contrôlés, au sens de l'article 355-1 de la loi no 66-537 du 24 juillet 1966 susvisée, par un ou plusieurs producteurs établis en dehors de ces États tiers européens ou des États visés au I ci-dessus.

Les participations d'auteurs, d'artistes-interprètes et de techniciens collaborateurs de création et le concours de prestations techniques mentionnés aux I-1 et II-1 ne peuvent être inférieurs à une

proportion fixée par arrêté conjoint des ministres chargés de la culture et de la communication."<sup>67</sup>

Let us now discuss Article 4 of the Directive. It must firstly be said that the purpose of the quotas referred to in that Article as well as those in Article 5 is to encourage the development of the European television production industry, make it competitive in the world market and to prevent massive importation of foreign, especially American, television programmes, thus eliminating the possibility of cultural dependence.<sup>68</sup> It must also be mentioned that these provisions are inapplicable to "local television broadcasts not forming part of a national network", according to Article 9 of the Directive.

The Directive's quota system and particularly Article 4's quota requirement caused different reactions. On the one hand, broadcasters opposed it because they prefer to buy foreign programmes which are less expensive and have a large audience share. On the other hand, actors, directors and scriptwriters supported the quota system since they wished to stimulate European production.<sup>69</sup> On the governmental level, France, Italy, Spain, Luxemburg and Belgium supported strict quotas in order to protect the Community producers and European culture, while the United Kingdom, West Germany, Denmark, The Netherlands, Ireland and Portugal argued against quotas either on the ground of broadcasting freedom or because the particular country had a small television production capacity.<sup>70</sup> Denmark and Germany, in particular, argued that the Community does not have competence in the cultural field.<sup>71</sup> Greece was trying to

---

<sup>67</sup> *Décret no 92-279 du 27 mars 1992, J.O., 28 Mars 1992, 75*, art. 4. Article 4 of Decree 92-279 of 27 March 1992 replaced Article 6 of Decree 90-66 of 17 January 1990, which provided a definition for cinematographic and audiovisual works of "European Community origin" without including in its provisions the other European countries that the Directive's definition of "European works" encompasses. The English translation of Article 4 of Decree 92-279 is provided in an appendix.

<sup>68</sup> *Supra*, note 17 at 350-351.

<sup>69</sup> *Supra*, note 14 at 201.

<sup>70</sup> *Supra*, note 17 at 332.

<sup>71</sup> *Supra*, note 12 at 158.

receive assurances of funding from other Member States in order to develop its film industry. It succeeded, but its attitude left it as a potential swing vote.<sup>72</sup> Moreover, many European politicians, actors and directors claimed that quotas are necessary for the protection of European cultural identity from "a flood of Hollywood programmes".<sup>73</sup> Jacques Delors, President of the European Commission, stated: "Culture is not another piece of merchandise and should not be treated as such ... [There will be] no protectionism and no laissez-faire" and added "[to] our American friends, ... I would like to ask: do we not have the right to exist ... to perpetuate our traditions, our heritage and our languages?"<sup>74</sup>

Nevertheless, doubts have been raised with respect to the practicality of Article 4. Indeed, the wording "where practicable" actually provides the Member States with a considerable flexibility in implementing and enforcing Article 4 of the Directive.<sup>75</sup> The British government, for example, has already indicated to British Satellite Broadcasting that its film channel does not need to comply with the EC Directive because it is "not practicable" to broadcast a majority of European films.<sup>76</sup> It is obvious that this statement of Article 4 needs immediate clarification. In addition, an interpretive declaration attached to the Directive explains that Articles 4 and 5 are politically and not legally binding. The European Court, therefore, will not be able to take action against

---

<sup>72</sup> Anonymous, "European TV Proposal Stalled" (June 1989) *Broadcasting* 54 at 54.

<sup>73</sup> S. Greenhouse, "Europe Reaches TV Compromise; US Officials Fear Protectionism" (1989) *N.Y. Times* (4 October 1989) A1 at D-20, col. 5.

<sup>74</sup> *Supra*, note 19, Appendix VI at 197.

<sup>75</sup> T. Guback, "What the Quota Really Means" (1990) 24:3 *Television Quarterly* 81 at 83. *Supra*, note 31, at 123.

<sup>76</sup> *Supra*, note 18 at 90.



a Member State which fails to comply with these provisions. The Commission also stated that it would not litigate the matter.<sup>77</sup>

Furthermore, the present quotas do not seem to protect the cultural industries of the smaller Community countries which have a low production capacity and, therefore, cannot compete with their European neighbours. These countries are prohibited from importing U.S. programmes and are obliged to import from the larger European countries.<sup>78</sup> The issue of the preservation of national culture and language remains. It is true that among the European States there exist some cultural commonalities. It might be argued that a European country, culturally speaking, has more in common with the rest of Europe than with the United States. Nevertheless, each European state has its own distinctive national culture - where Europe's cultural diversity comes from - which it wishes to maintain and promote. This is more difficult to accomplish for a country which lacks a strong presence in the audiovisual sector or a wide language area. Smaller European countries certainly constitute a part of a European cultural identity, which, however, they should be helped to maintain. It is therefore questionable whether the Directive's quotas alone will achieve maintenance of the Community's cultural diversity or dominance of certain European cultures and languages.

In addition, the Directive does not make any reference to the issue of quality. If European productions are preferred regardless of their qualitative level, the European industry will probably benefit very little from the Directive.<sup>79</sup>

Another question raised is whether the broadcast quota can increase competition within the European television broadcasting market. How will new and smaller television stations be able to survive if they have to include in their programming a

---

<sup>77</sup> S. Morgan, "European Television. Broadcasting in the 1990's" (1989) 7:11 Int'l Media Law 90 at 95. *Supra*, note 65 at 354-355.

<sup>78</sup> *Supra*, note 18 at 91.

<sup>79</sup> *Supra*, note 18 at 89.

majority of European works? The policy of such stations is to buy programmes that are less expensive than the European productions, which allows these stations to survive economically and compete within the broadcast market. It is obvious that these television stations cannot afford to include in their programme schedules a majority of European works. They will probably be forced to close their businesses. This will mean fewer stations, a reduction in competition, and less choices for the viewers<sup>80</sup>. It appears, therefore, that the big, economically strong European television organizations will dominate the market. This situation raises also the issue of pluralism.

Nevertheless, the European Community has adopted an action programme, which promises to remedy many of the above weaknesses of Article 4. Reference to this programme will be made in the third section of this chapter.

Finally, Article 4 raises the following two questions: Can a Member State fulfil the quota requirement with only domestic productions, which actually qualify as "European works" since they are made by authors and workers residing in a Member State and are produced or supervised or actually controlled by producers established in that Member State? If the answer is negative, the next question is: Does Article 4 impose a majority of European works beyond the national productions or can the latter be a part of the quota requirement and to what extent? Will a Member State comply with the Directive if, apart from the percentage for European works, it enacts a quota for national productions as well? According to the letter of the provision (Article 4), we can say that national productions can be used exclusively for the achievement of the quota requirement. Article 4 refers to "European works" and makes no distinction between national and other European works. The domestic productions of a Member State are European works. However, taking into consideration the spirit of the Directive, we should conclude that national productions cannot cover entirely the Directive's quota requirement. The intention of the Community is to build a strong European television

---

<sup>80</sup> B.L. Ross, "I Love Lucy", but the European Community doesn't: Apparent Protectionism in the European Community's Broadcast Market" (1990) 16 Brooklyn J. of Intern. Law 529 at 549.

industry by stimulating the development of the national industries as well as the cooperation between them and the exchange of television programmes throughout the European Community. The goal is to block the flow of American programmes and replace at least the largest part of them with European productions. The citizens of each Member State are to be exposed to the culture and artistic creativity of other European countries. This is expected to bring a mutual understanding, which is necessary for the European integration. If the 51% for European works can be fulfilled completely with national productions, then there will be no change in the programme schedule of European channels since the remainder 49% can be covered with news, sports, games and foreign productions, that will probably be American, because they are less expensive and in abundance. The image of European television will remain the same. Besides, the definition of "European works" set out in Article 6 of the Directive will have no meaning if the Member States could fulfil the quota requirement only with domestic productions. On the other hand, national productions cannot be excluded from the Directive's quota because they are "European works". Nonetheless, the judgement of the European Court of Justice (25 July 1991) concerning the Dutch law on the media enunciated that they must be no quotas for national productions and no discrimination against other European productions. According to that judgement, the Member States are allowed to pursue a cultural policy in favour of a specific language but not to "protect" domestic productions against those of other Member States. In other words, Member States can fix language but not national quotas. Television broadcasters are obliged to give preferential treatment in terms of broadcasting time to European productions. The adoption of language quotas must not prevent productions and co-productions originating in other Member States since that would create an "indirect" barrier to their entry into the Member State in question.<sup>81</sup> Indeed, Article 8 of the Directive entitles Member States, for the purpose of language policy, to lay down stricter or more detailed rules in particular on the basis of language criteria, as regards some or all programmes of television broadcasters under

---

<sup>81</sup> Commission of the European Communities, " 'Television Without Frontiers' Directive", Memo No. 48, Brussels, 4 October 1991, at 2.

their jurisdiction, while observing Community law. Therefore, national legislation can provide a quota for television programmes produced in the language of the country without requiring that those programmes be necessarily home-produced. The issue of language policy was also addressed by Mr. Jean Dondelinger, Member of the Commission responsible for audiovisual and cultural affairs. Commissioner Dondelinger, in an address to the Summer Communications University at Carcans-Maubuisson, stated that the Member States could develop linguistic policies, which must respect the EEC Treaty rules. This meant that the measures adopted could not place restrictions disproportionate to the linguistic objective pursued.<sup>82</sup>

In respect of the issue of non-discrimination against other European productions, the following case can be given as an example:<sup>83</sup> The Executive branch of the French Community in Belgium issued an order requiring the Belgium French language public channel, RTBF, to allocate part of its advertising revenues to: "i) the coproduction of fictitious or documentary works; ii) the production, coproduction and acquisition of programmes aimed at children and adolescents, entertainment programmes, live shows and educational programmes; iii) *"with legal or moral persons whose residence or registered office is located in the French speaking region of Belgium or the bilingual Brussels region."* From the Commission's standpoint, this requirement "hinders the possibilities for coproduction or contracts with persons established in other Member states" and "the possibilities for these persons to provide services in the French Community ... are consequently restricted". The Commission states: "This is a discriminatory restriction because the measure only expressly benefits those providers of services who reside in Belgium". Therefore, Belgium has "failed in its obligations

---

<sup>82</sup> Commission of the European Communities, Press Release 1P (91) 803, "Jean Dondelinger Addresses the Summer Communications University. Carcans-Maubuisson, 27 August 1991" (27 August 1991).

<sup>83</sup> "(EU) Television Without Frontiers/Belgium: The European Commission Considers the Attitude of the French Community of Belgium towards TF1 Incompatible with the Free Provision of Services and Rules of Competition - Advertising Funds Reserved for Regional Producers are also Challenged", Europe, No. 5354 (new series), Saturday, 20 October 1990, at 14.

pursuant to Article 59" of the EEC Treaty.<sup>84</sup> By funding productions and coproductions made only with persons residing in Belgium, the country favours works originating in its territory against those of other Member States.

With respect to linguistic policies, France has taken advantage of Article 8 of the Directive. French Decree 90-66 of 17 January 1990<sup>85</sup>, as amended by Decree 92-279 of 27 March 1992,<sup>86</sup> defines "audiovisual works", and "cinematographic or audiovisual works of an original French expression" and provides quotas for "European works" as well as for works of "an original French expression." The French definition of "audiovisual works" is restrictive in comparison with Article 4 of the Directive, which excludes only news, sports events, games, advertising and teletext services. The French legislation defines "audiovisual works" as follows: "Constituent des oeuvres audiovisuelles les émissions ne relevant pas d'un des genres suivants: oeuvres cinématographiques de longue durée; journaux et émissions d'information; variétés; jeux; émissions autres que de fiction majoritairement réalisées en plateau; retransmissions sportives; messages publicitaires; téléachat; autopromotion; services de télétexte".<sup>87</sup> The definition of "Cinematographic or audiovisual works of an original French expression" is as follows: "Constituent des oeuvres cinématographiques ou audiovisuelles d'expression originale française les oeuvres réalisées intégralement ou principalement en

---

<sup>84</sup> The first paragraph of Article 59 of the EEC Treaty reads as follows: "Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended."

<sup>85</sup> *Décret no 90-66 du 17 janvier 1990*, J.O., 18 Janvier 1990, 757.

<sup>86</sup> *Supra*, note 67.

<sup>87</sup> *Supra*, note 85, art. 4 and *supra*, note 67, art. 2. The English translation of the definition has as follows: Audiovisual works are broadcasts other than: cinematographic works of long duration; news and information broadcasts; variety shows; games; broadcasts other than fiction which is mostly made on the stage; sports retransmissions; advertisements; TV-shopping; autopromotion; teletext services.

version originale en langue française ou dans une langue régionale en usage en France".<sup>88</sup> Finally, the state-owned national television stations (Antenne 2 and FR3) and the private ones which broadcast by hertzian waves are required to reserve for European works at least 60% of the total annual time devoted to the broadcasting of audiovisual works (or in the case of cinematographic works of long duration, of the total annual time devoted to these works), and for works of an original French expression at least 40% of that time.<sup>89</sup> However, these proportions "must be equally respected during prime time", namely between 6:00 pm and 11:00 pm as well as from 2:00 pm to 6:00 pm on Wednesdays<sup>90</sup>.

Before the amendments initiated by Decree 92-279 of 27 March 1992, the required quota for works of an original French expression was 50%, and "cinematographic or audiovisual works of an original French expression" were defined as follows: "Constituent des oeuvres cinématographiques ou audiovisuelles d'expression originale française, outre les oeuvres cinématographiques ou audiovisuelles réalisées intégralement en version originale en langue française, celles qui sont principalement réalisées en langue française des lors que le scénario original et le texte des dialogues ont été rédigés en langue française"<sup>91</sup> The Commission of the European Communities, however, estimated that the high (50%) quotas for works of an original French expression together with the strict definitions of these works and of audiovisual works

---

<sup>88</sup> *Supra*, note 67, art. 3. In English, the definition has as follows: cinematographic or audiovisual works of an original French expression constitute the works which are entirely or principally produced in an original French language version or in a regional language used in France.

<sup>89</sup> *Supra*, note 85, arts. 7 and 8 and *supra*, note 67, arts. 6 and 7.

<sup>90</sup> *Supra*, note 85, art. 9 and *supra*, note 67, art. 8

<sup>91</sup> *Supra*, note 85, arts. 5, 7 and 8. The English translation of the definition has as follows: cinematographic or audiovisual works of an original French expression constitute the works which were produced entirely in an original French language version as well as those that were principally produced in the French language provided that the original script and the text of dialogues were written in the French language.

restricted the access to the French market for producers of other Member States.<sup>92</sup> Accordingly, France amended the definition of works "of an original French expression" by omitting the requirement that the scenario and the text of dialogues must be written in French and decreased the quota for these works. With respect to the previous definition, it was argued that it rendered difficult many of the European co-productions.<sup>93</sup> It is normal that a foreign coproducer, since it contributes to the financing of an audiovisual work, wishes, for instance, to participate in the writing of the script and to engage in the work one or more actors/actresses of its own country<sup>94</sup>. Nevertheless, it must be said that co-productions whose script and text of dialogues were not written in the French language would fall within the quota for "European works" if the condition of Article 6 of the Directive were fulfilled.

The French origin of the script and the text of dialogues is no longer a requirement under the present definition, which obviously has been enlarged to include productions whose script and dialogues were entirely written in another language and translated into French or were partly written in another language - for example, English or Dutch. This is what the Commission of the European Communities has accepted in relation to the application of Article 8 of the Directive, which refers to the adoption of a language policy.<sup>95</sup> Nevertheless, one notes that the definition of French works does not consider the subject-matter of the programming. If an audiovisual work meets the requirements of the definition, it qualifies as a French work even if it has adopted the norms and style of an American programme, even if it does not reflect the French culture at all.

---

<sup>92</sup> S. Havard, *La Construction d'une Europe Audiovisuelle: L'Adequation des Politiques Menées*, (Montreal: McGill University - Faculty of Law, 1993) (LL.M. Thesis) at 13.

<sup>93</sup> *Ibid.* at 20.

<sup>94</sup> *Supra*, note 92 at 21.

<sup>95</sup> *Supra*, note 92 at 22.

In closing the discussion of the European Directive, it must be mentioned that, apart from the provisions analyzed above, the Directive contains rules relating to advertising, sponsorship, protection of minors and right to reply. Likewise, according to Article 3(1) the Member States are free "to require television broadcasters under their jurisdiction to lay down more detailed or stricter rules in the areas covered by the Directive".

## **SECTION B: European Convention on Transfrontier Television**

### **Part I: Reasons for the Adoption of the Convention - Objectives**

In the first European Ministerial Conference on Mass Media Policy, in Vienna, on 9 and 10 December 1986, the ministers adopted a declaration in which they decided "to assign the highest priority ... to the rapid preparation, within the Council of Europe framework, of binding legal instruments on certain crucial aspects of transfrontier broadcasting".<sup>96</sup> Following this Declaration, the Committee of Ministers instructed the Steering Committee on the Mass Media (CDMM) to present, without delay, the text of a Draft European Convention on Transfrontier Broadcasting.<sup>97</sup> The Convention was negotiated between 1987 and 1989.<sup>98</sup> On 15 March 1989, it was adopted by the Committee of Ministers and on 5 May 1989 was opened for signature by member states and other states parties to the European Cultural Convention and the European Economic Community.<sup>99</sup>

---

<sup>96</sup> Council of Europe, *Explanatory Report on the European Convention on Transfrontier Television*, (Strasbourg: Council of Europe, Publishing and Documentation Service, 1990), at 5.

<sup>97</sup> Council of Europe - Directorate of Human Rights, *Council of Europe Activities in the Media Field*, (Strasbourg: Council of Europe, Publishing and Documentation Service, 1991), at 19.

<sup>98</sup> *Supra*, note 12 at 141.

<sup>99</sup> *Supra*, note 97 at 20.



André Lange and Jean-Luc Renaud in the book "The Future of the Audiovisual Industry", state that the action of the Council of Europe "is motivated essentially by the principle of the free circulation of information and of ideas laid down in the European Convention on Human Rights, and by the concern to increase exchanges and cooperation between the European States in order to develop Europe's cultural identity".<sup>100</sup> The Council of Europe wanted to balance the free flow of information and the protection of fundamental values attached to broadcasting.<sup>101</sup> We read in the "Explanatory Report on the European Convention on Transfrontier Television" that the major consequences of the technological developments in the area of transmission of television programme services are, firstly, "the increasingly transfrontier character of the services transmitted" and secondly, "the multiplication of programme services and competition between them".<sup>102</sup> These developments increase considerably the public's choices in television programme services and offer new opportunities for cultural expression and communication between nations. However, they also raise questions on the matters, inter alia, of the structures of national media and the fundamental functions of broadcasting, the preservation and promotion of European cultural identities and "the interest of the public to receive a high quality service which contributes as a whole to the free formation of opinions and the development of culture".<sup>103</sup> Furthermore, since it seemed that the Community Directive (which was being negotiated at that time) created a new obstacle dividing, within the Council of Europe, the twelve and the non-twelve, the Committee of Ministers considered the Council of Europe a more appropriate forum for the creation of a legal framework on transfrontier broadcasting.<sup>104</sup>

---

<sup>100</sup> A. Lange, Jean-Luc Renaud, *The Future of the European Audio-visual Industry*, (Manchester: The European Institute for the Media, 1989), at 65.

<sup>101</sup> *Supra*, note 12 at 156.

<sup>102</sup> *Supra*, note 96 at 10.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Supra*, note 12 at 156.

Consequently, the objective of the Convention is to create a comprehensive regulatory framework on transfrontier television, which will "strengthen the free exchange of information and ideas by encouraging the transfrontier circulation of television programme services on the basis of a number of commonly agreed basic standards"<sup>105</sup> in particular on the rights of viewers, the duties of States, programming standards, advertising and sponsorship. It does not regulate the broadcasting activities, policies and structures of the Member States.<sup>106</sup>

Unlike the European Community, the Council of Europe accepts the existence of frontiers between States as a reality, and it does not wish to create a common market on television broadcasting.<sup>107</sup> With respect to television in Europe, the Council of Europe has political and cultural leadership, while commercial and economic leadership can be expected from the EEC,<sup>108</sup> even though it shows a strong cultural concern for television broadcasting.

In addition, the Council of Europe, unlike EC, represents a geographically larger European area. Nevertheless, its regulations are not compulsory for its Member States.<sup>109</sup> The Council of Europe acts through "recommendations" and does not have executive powers.<sup>110</sup>

---

<sup>105</sup> *Supra*, note 96 at 11.

<sup>106</sup> *Ibid. Supra*, note 12 at 159.

<sup>107</sup> *Supra*, note 12 at 148.

<sup>108</sup> F.W. Hondius, "European TV: Across or Without Frontiers?" (1989) 12 *Transnational Data and Communications Report* 17, at 20.

<sup>109</sup> *Supra*, note 18 at 62.

<sup>110</sup> E. Noam, *Television in Europe*, (New York-Oxford: Oxford University Press, 1991) at 293.

Finally, it must be mentioned that the European Convention on Transfrontier Television has not yet entered into force because it has not been ratified by the necessary number of States.<sup>111</sup> As regards Greece, it signed the Convention on 12 March, 1990, but it has not ratified it.<sup>112</sup>

## **Part II: Transfrontier Transmission and Retransmission of Television Programme Services - Cultural Objectives**

The first Article of the European Convention on Transfrontier Television<sup>113</sup> lays down its purpose: "to facilitate, among the Parties, the transfrontier transmission and the retransmissions of television programme services". The terms "transmission" and "retransmission" are defined in Article 2 of the Convention. "Transmission" is the initial emission of television programme services for reception by the general public, regardless of the technical means employed. The term includes subscription television services as long as they are not designed specifically and exclusively for a particular group of people, such as the members of a given profession.<sup>114</sup> "Retransmission" is defined as "receiving and simultaneously transmitting, irrespective of the technical means employed, complete and unchanged television programme services, or important part of such services, transmitted by broadcasters for reception by the general public". Article 2 also defines the terms "broadcaster", "programme service", and "audio-visual works of European origin". "Broadcaster" is the natural or legal person "who composes television programme services for reception by the general public and transmits them or has them transmitted, complete and unchanged, by a third party". "Programme service" means "all the items within a single service provided by a given broadcaster" - that is to say individual programme items, programme trailers, advertisements, logo of the service and

---

<sup>111</sup> *Supra*, note 97 at 74.

<sup>112</sup> *Ibid.* at 75, 84.

<sup>113</sup> *European Convention on Transfrontier Television*, 14 *Annals of Air and Space Law* (1989), 577.

<sup>114</sup> *Supra*, note 96 at 15.

so on.<sup>115</sup> The term "audio-visual works of European origin" is defined as "creative works, the production or coproduction of which is controlled by European natural or legal persons". The "Explanatory Report on the European Convention on Transfrontier Television" clarifies that the concept of production control embraces control over the content of the work, over the production process and over the end product itself. A European audiovisual work can be financed in part from non-European countries, yet the artistic and technical production control must be left effectively in the hands of European natural or legal persons.<sup>116</sup>

The rules of the Convention apply to transfrontier television programme services. The criterion for the determination of the transfrontier character of a programme service is one: "any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Party, whether by cable, terrestrial transmitter or satellite, and which can be received, directly or indirectly, in one or more other Parties".<sup>117</sup> Unlike the EC Directive, the Convention applies to local and regional television programme services and to specialised services if they can be received in one or more other Parties. It was found that there did not exist any objective reason for not including these services in the field of application of the Convention.<sup>118</sup>

As the EC Directive, the Convention lays down the principle of freedom of reception and retransmission. Article 4 requires that the Parties guarantee freedom of reception and not restrict the retransmissions on their territories of programme services which comply with the provisions of the Convention. As long as the programme services transmitted from another Party comply with the terms of the Convention, a Party cannot

---

<sup>115</sup> *Ibid.* at 16.

<sup>116</sup> *Supra*, note 96 at 17.

<sup>117</sup> *Supra*, note 113, art. 3. *Supra*, note 96 at 20.

<sup>118</sup> *Supra*, note 96 at 20.

rely on its domestic broadcasting law, in areas covered by the Convention, to preclude their retransmissions on its territory.<sup>119</sup> Moreover, the Parties must ensure freedom of expression and information in accordance with Article 10 of the European Convention on Human Rights.<sup>120</sup>

Each transmitting Party must ensure "by appropriate means" that programme services over which they have jurisdiction comply with the terms of the Convention.<sup>121</sup> This provision, however, must not be interpreted as allowing the States to interfere with the responsibility and independence of the broadcaster with respect to programming content or programming sponsorship.<sup>122</sup> The transmitting Party has jurisdiction over terrestrial transmissions if the initial broadcast is effected within its territory. Satellite transmissions are to be regulated by the Party in which the satellite up-link is situated or the Party which grants the use of the frequency or a satellite capacity or the Party in which the broadcaster has its seat.<sup>123</sup> As in the case of the EC Directive, it is the law of the originating State which prevails. In the case where programme services transmitted from States which are not Parties to the Convention are retransmitted, by any means, within the jurisdiction of a Party, that Party, acting as transmitting Party, must ensure compliance with the Convention's provisions.<sup>124</sup>

The cultural objectives of the Convention are expressed in Article 10. Its first paragraph reads exactly as the provision of Article 4 of the Community Directive. The Parties must ensure, "where practicable and by appropriate means, that broadcasters

---

<sup>119</sup> *Ibid.* at 21.

<sup>120</sup> *Supra*, note 113, art. 4.

<sup>121</sup> *Ibid.* art. 5(1).

<sup>122</sup> *Supra*, note 96 at 22.

<sup>123</sup> *Supra*, note 113, art. 5(2). *Supra*, note 77 at 90.

<sup>124</sup> *Supra*, note 113, art. 5(3).

reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services". This proportion must be achieved "progressively, on the basis of suitable criteria", having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public. In the "Explanatory Report on the European Convention on Transfrontier Television" we read that "the objective pursued by this paragraph is to ensure the development and exploitation, notably in the European context, of creative national productions and European co-productions (fiction, series, serials, films, documentaries, arts and educational programmes, etc.) *in order to uphold European cultural identity as regards both its specific national features and common values, and to guarantee pluralistic means of expression*".<sup>125</sup> [Emphasis added]. This provision of the Convention raises, more or less, the same questions as Article 4 of the Directive. However, in reference to smaller countries, the third paragraph of Article 10 provides that the Parties must "undertake to look together for the most appropriate instruments and procedures to support, without discrimination between broadcasters, the activity and development of European production, particularly in countries with a low audio-visual production capacity or restricted language area". This stipulation emphasizes the concern to maintain and promote the diverse and distinctive features of European cultural identity.<sup>126</sup> Article 10 also provides that in the case of disagreement between a transmitting and a receiving Party on the application of Article 10(1), the Parties may have recourse to the Standing Committee (provided in Article 20 of the Convention) with the purpose to obtain an advisory opinion - a provision which is not found in the Community Directive.<sup>127</sup>

---

<sup>125</sup> *Supra*, note 96 at 31.

<sup>126</sup> *Ibid.* at 33. European cultural identity does not mean the creation of a homogeneous European culture but the result of bringing together the plural elements of the various European cultures. Each national culture with its diverse and distinctive features can contribute to this European cultural identity.

<sup>127</sup> *Supra*, note 113, art. 10(2).

The Convention contains provisions for the settlement of disputes and violations of its terms.<sup>128</sup> In relation to the latter case, Article 24 allows, under certain conditions, the provisional suspension of the retransmissions of a programme services. However, this sanction is not permitted in the case of alleged violations of Article 10.<sup>129</sup> In addition, under Article 20 of the Convention, a Standing Committee is set up, consisting of representatives of the parties, in order, *inter alia*, to keep the practical implementation of the Convention under review.<sup>130</sup> The Convention, like the EC Directive, includes provisions for advertising, sponsorship, right of reply, protection of children and allows the Parties to enact stricter or more detailed rules than those provided for in the Convention.<sup>131</sup>

Finally, since the Member States of the Community are also Member States of the Council of Europe, Article 27(1) of the Convention declares that "in their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall not therefore apply the rules arising from this Convention except insofar as there is no Community rule governing the particular subject concerned."

### **SECTION C: Action Programmes for the Development of the European Audiovisual Production**

The Council of Europe as well as the European Community decided to adopt positive measures outside the framework of the Convention and the Directive in order to promote European audiovisual production; otherwise, the requirement for the

---

<sup>128</sup> *Supra*, note 113, arts. 24-26.

<sup>129</sup> *Supra*, note 113, art. 24(4).

<sup>130</sup> *Supra*, note 113, arts. 20, 21.

<sup>131</sup> *Supra*, note 113, arts. 7, 8, 11-16, 17, 18, 28.

reservation of a majority proportion for European works would be rendered meaningless.<sup>132</sup> In this section, a brief reference will be made to three initiatives: the EURIMAGES fund, the Audiovisual EUREKA Programme, and the MEDIA Programme.

To begin with, one of the Council of Europe's measures for the promotion of the production and distribution of European audiovisual works was the establishment in 1988 of a European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual works (EURIMAGES).<sup>133</sup> The Eurimages Fund started to operate in 1989,<sup>134</sup> and its aim is to encourage "the development of multilateral European co-productions (co-productions involving producers from at least three of the Fund's Member States) and their distribution in Europe by way of financial support".<sup>135</sup>

Furthermore, on 2 October 1989, at a European audiovisual conference in Paris, the Ministers or representatives of 26 European States as well as the President of the Commission of the European Communities adopted a Declaration on Audiovisual EUREKA.<sup>136</sup> They decided to establish a series of measures entitled "Audiovisual EUREKA" with the purpose to support the audiovisual sector and especially to strengthen the European programme industries while respecting and encouraging the dissemination of European cultures and languages.<sup>137</sup> The objectives of the Audiovisual EUREKA

---

<sup>132</sup> *Supra*, note 108.

<sup>133</sup> *Supra*, note 97 at 17.

<sup>134</sup> *Supra*, note 12 at 154.

<sup>135</sup> *Supra*, note 97 at 17.

<sup>136</sup> *Joint Declaration on Audiovisual EUREKA*, in Commission of the European Communities, *The European Community Policy in the Audiovisual Field*, (Luxembourg: Office for Official Publications of the European Communities, 1990) at 23. *Supra*, note 108.

<sup>137</sup> *Joint Declaration on Audiovisual EUREKA*, *ibid.* at 23, 24.



measures are to encourage: the creation of a more "transparent and dynamic" European audiovisual market, the undertaking of actions and cooperation projects designed to promote the competitiveness of European programme enterprises and strengthen their capacity to create and produce, the widest expansion of European programme distribution, the development and the widest possible propagation of production from countries having a limited geographic or linguistic area in Europe, and the promotion of European technologies with respect to the production and transmission of films and audiovisual programmes.<sup>138</sup>

In addition, the Ministers decided to establish an Audiovisual EUREKA Coordinators' Committee consisting of the representatives of the governments of the participating States and the Commission of the European Communities, while a representative of the Council of Europe was invited to participate in the Committee's work.<sup>139</sup> The tasks of the Committee will be to further examine the content and the objectives of Audiovisual EUREKA, to evaluate its results, to make recommendations with respect to market structures and basic rules of the audiovisual industry and to propose ministerial meetings with the purpose of adopting new guidelines or measures for the promotion of Audiovisual EUREKA.<sup>140</sup> The Ministers also decided the creation of another body, the Audiovisual EUREKA secretariat with the tasks of "convening and preparing the meetings of the Audiovisual EUREKA Coordinators' Committee" and of "assisting interested enterprises and other bodies to establish ... contacts with partners for Audiovisual EUREKA projects of participating states".<sup>141</sup> Finally, the Ministers asked the Audiovisual EUREKA Coordinators' Committee to examine the possibility of establishing a European Audiovisual Observatory with the objective of collecting data and

---

<sup>138</sup> *Ibid.* at 24.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Joint Declaration of Audiovisual EUREKA*, *supra*, note 136, at 24-25.

<sup>141</sup> *Ibid.* at 25.

providing it at the request of professionals and of the Audiovisual EUREKA Coordinators' Committee. This initiative is expected to facilitate the implementation of the projects of the Audiovisual EUREKA.<sup>142</sup>

Enterprises and other interested bodies are invited to submit projects, which, however, will have to comply with certain objectives and criteria defined by the Audiovisual EUREKA Coordinators' Committee. Annex I of the Declaration provides some principles on the basis of which these objectives and criteria should be defined.<sup>143</sup>

Lastly, the purpose of the Audiovisual EUREKA is not to replace existing initiatives in the audiovisual sector, such as those of the European Community and the Council of Europe. On the contrary, it aims at their extension or completion.<sup>144</sup> Moreover, the European Community can take part in Audiovisual EUREKA projects, particularly through its programmes, and the Council of Europe is invited to cooperate.<sup>145</sup>

In relation to the MEDIA Programme, it is a programme of the Commission of the European Communities started at the end of 1986 and later renamed to MEDIA 92.<sup>146</sup> Its aim is to create a favourable climate for the European cinema and television programme industry, to promote the national industries within Europe by enabling them to benefit from a larger market and to generate vital cooperation between these industries.<sup>147</sup> It is hoped that the MEDIA programme will create the transnational

---

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.* Annex I, at 26.

<sup>144</sup> *Joint Declaration on Audiovisual EUREKA*, *supra*, note 136, Annex II, at 27.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Supra*, note 19 at 63. *Supra*, note 18 at 74.

<sup>147</sup> *Supra*, note 18 at 74.

dimension which is necessary for the European audiovisual industry in order to be competitive on the world market. This is to be accomplished by improving the production and distribution of programmes in relation to the demand created by the technological developments.<sup>148</sup>

The MEDIA action programme focuses on the distribution, production, training and financing sectors of the audiovisual industry<sup>149</sup> and encompasses a series of initiatives consisting of three phases: consultation of industry phase (1987), pilot experiment phase (1988-1990) and main phase (beginning in 1991).<sup>150</sup> During the first phase, consultations were carried out with professionals involved in the audiovisual industry in Europe, as well as indepth market studies in the production and distribution sectors.<sup>151</sup> On the basis of the consultations and studies, pilot projects were established which were financed by the MEDIA programme up to 50%, while the rest was to be supplied by other sources such as institutions, private sponsors, professionals, governments of Member States.<sup>152</sup> The pilot projects constituted the experimental phase of the MEDIA programme, which ended in 1990. Some of these pilot projects are the following: BABEL (Broadcasting Across the Barriers of European Language) is a project which aims at the promotion of pan-European multilingual broadcasts and provides financial support for dubbing and subtitling.<sup>153</sup> EURO-AIM (The European Organization for an Independent Audiovisual Market) is a service structure which advises

---

<sup>148</sup> Bull. EC 4-1987; *A Fresh Boost for Culture in the European Communities*, at 14.

<sup>149</sup> *Supra*, note 18 at 74. *Supra*, note 19 at 63.

<sup>150</sup> *Commission Communication to the Council accompanied by two proposals for Council Decisions relating to an Action Programme to Promote the Development of the European Audiovisual Industry "MEDIA" 1991-1995*, COM (90) 132 final, in Commission of the European Communities, *The European Community Policy in the Audiovisual Field*, (Luxembourg: Office for Official Publications of the European Communities, 1990) at 74.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Supra*, note 19 at 63. *Supra*, note 18 at 74.

<sup>153</sup> *Supra*, note 110 at 294.

independent producers, provides them with commercial facilities and organizes their presence on international markets.<sup>154</sup> The European Script Fund supports the pre-production stage of selection of ideas for feature films and television fiction productions.<sup>155</sup> EAVE (European Audiovisual Entrepreneurs) organizes training seminars for young producers.<sup>156</sup> Media Investment Club for Advanced Technologies brings together industrial companies, broadcasters and financial institutions with the purpose of promoting the use of advanced technology in audiovisual production.<sup>157</sup>

The Commission, taking into consideration the achievements and guidelines emerging from the pilot experiment phase, submitted to the Council a proposal for a Decision concerning the continuation of the MEDIA measures from 1991.<sup>158</sup> On 21 December 1990, the Council adopted a Decision "concerning the implementation of an action programme to promote the development of the European Audiovisual industry (Media) (1991 to 1995)" (Decision 90/685/EEC).<sup>159</sup>

The aims of the adopted programme are: to create a favourable audiovisual environment for Community undertakings and enable them to take full advantage of the single market dimension, to stimulate and augment the supply capacity of European audiovisual products "with special regard for the role and requirements of small and medium-sized undertakings ... and the position of countries in Europe with smaller audiovisual production capacities and/or with a limited geographical and linguistic area",

---

<sup>154</sup> Council Decision No. 685 of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995), O.J. Eur. Comm. (No. L 380) 37 (1990), Annex I, at 41. *Supra*, note 18 at 75.

<sup>155</sup> *Supra*, note 19 at 64.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

<sup>158</sup> *Supra*, note 150 at 67.

<sup>159</sup> Council Decision No. 685, *supra*, note 154.

to expand intra-European exchanges of films and audiovisual programmes, to promote the use of the new forms of technology in the areas of programme production and distribution and to assure that action taken at European level complements that taken at national level.<sup>160</sup>

The measures that should be put into effect for the attainment of the above objectives are described in Annex I of Council Decision 90/685/EEC. Briefly, these measures embrace: firstly, the improvement of distribution mechanisms for the promotion of European productions via the extension of MEDIA's pilot projects. Special attention is paid to the support of multilingualism in television programmes and to market access for independent producers. With respect to the issue of multilingualism, the measures include the prolongation of the BABEL scheme with the objective of continuing to offer support for dubbing or subtitling and of finding ways to perfect these techniques including their harmonization. As regards independent producers, the programme provides the intensification of the EURO-AIM scheme;<sup>161</sup> secondly, the improvement of production conditions with particular reference to the development of preproduction and screenplay-writing, the use of new technologies, and the creation of a "second market" especially by using archive material;<sup>162</sup> thirdly, the creation of a climate which will stimulate financial investment;<sup>163</sup> fourthly, the improvement of the economic and commercial abilities of professionals;<sup>164</sup> fifthly, the development of the audiovisual potential of countries with smaller production capacities and/or with a limited geographical and linguistic area.<sup>165</sup>

---

<sup>160</sup> *Ibid.* art. 2.

<sup>161</sup> *Ibid.* Annex I, at 41.

<sup>162</sup> Council Decision No. 685, *supra*, note 154, Annex I, at 41-42.

<sup>163</sup> *Ibid.* at 42.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

Article 7 of Council Decision 90/685/EEC holds the Commission responsible for the implementation of the programme and lays down the procedure to be followed.

The Community can also participate in Audiovisual EUREKA projects "which complement or extend" the measures adopted under Council Decision 90/685/EEC and satisfy certain criteria set out in Annex II of the said Decision.<sup>166</sup> This participation will be achieved basically in two ways: firstly, the professionals of the signatory countries to the "Joint Declaration on Audiovisual EUREKA" can be invited to join in the Community's action programme. Secondly, the Community will take part in Audiovisual EUREKA projects via its action programme.<sup>167</sup>

Finally, Council Decision 90/685/EEC contains provisions for financial contributions and provides that the Community should also promote cooperation with professionals in the audiovisual industry in Central and Eastern European countries.<sup>168</sup>

In closing this section, we can say that the described action programmes indicate that television broadcasting is considered a high priority particularly on the European Community agenda and promises to remedy the weaknesses generated from the quota requirements provided in the Community Directive and the Council of Europe's Convention on Transfrontier Television.

#### **SECTION D: Implementation of the Directive: The Example of Greece**

Presidential Decree 236/1992<sup>169</sup> implements Council Directive 89/552/EEC deviating very little from the letter of its provisions. With respect to Article 2 of the

---

<sup>166</sup> Council Decision No. 685, *supra*, note 154, art. 4.

<sup>167</sup> *Ibid.* Annex II, at 43.

<sup>168</sup> Council Decision No. 685, *supra*, note 154, arts. 4, paras. 2 and 3, 5, 6.

<sup>169</sup> *Presidential Decree no 236*, Hellenic Republic Gazette, 16 July 1992, Fasc. A, No. 124.

Directive (freedom of reception and retransmission of television broadcasts), the Greek law provides that the reception of television broadcasts is free and is not subject to any licence, while the retransmission of television broadcasts originating in other Member States is also free, but subject to the grant of a licence according to the provisions of Act 1866/89.<sup>170</sup> The licence will be granted on the basis of strictly objective criteria which will comply with the international law, European Community Law and national law and by taking into consideration the availability of television frequencies.<sup>171</sup> Article 3(5) of the Greek legislation, like Article 2(2) of the Directive, provides that the Greek government can suspend provisionally the retransmission of television broadcasts only in the case where a violation of the provisions protecting minors takes place.

As regards Article 4 of the Directive, the provision of Article 4(1) of Presidential Decree 236/92 states that "the television stations are obliged to broadcast works originating in the Member States of the Community in a proportion which surpass 50% in accordance with Article 6(7) of Act 1866/89". As has already been mentioned in the first chapter of this thesis, Article 6(7) of Act 1866/89,<sup>172</sup> requires that the contract which private channels conclude with the Greek government provide a satisfactory percentage of European production programmes, which cannot fall below 50% (excluding "public" information broadcasts).

With respect to these provisions we note, firstly, that they are stricter than the Directive since they do not comprehend the wording "where practicable" of Article 4 of the Directive. Article 4(1) of Presidential Decree 236/92 imposes on television stations an obligation, while Article 4 of the Directive is not a legally binding provision. Secondly, the effect of the provisions 6(7) of Act 1866/89 and 4(1) of Presidential Decree 236/92 should be that all television stations are subject to the quota requirement -

---

<sup>170</sup> *Ibid.* arts. 3(3), (4).

<sup>171</sup> *Supra*, note 169, art. 3(4).

<sup>172</sup> *Act no 1866*, Hellenic Republic Gazette, 6 October 1989, Fasc. A, No. 222.

not only the private ones as Article 6(7) indicates. Article 4(1) of the Presidential Decree is the latest provision which implements Article 4 of the Directive and refers to "television stations" without making any distinction between the state-owned and the private ones. With respect to private stations, however, the quota requirement must be stipulated in their contract with the Greek government. A different interpretation would allow for discrimination between state-owned and private television stations, which is incompatible with the Directive.<sup>173</sup> Nevertheless, for the time being, the quota requirements apply only to the state-owned television stations, ET-1 and ET-2, and to the private channels, Mega Channel, Antenna, Nea Tileorasi, New Channel, Seven X and Kanali 29, for they are the only ones which broadcast nationally. Articles 9 of the Directive and 5 of the Greek Presidential Decree state that the quotas referred to in Articles 4 and 5 of the Directive do not apply to local television broadcasts which are not part of a national network. Thirdly, the quota requirement provided by the Greek law excludes only information broadcasts, while Article 4 of the Directive excludes sports events, games, advertising and teletext services as well. Consequently, the Greek legislation facilitates the fulfilment of the quota obligation since sports events and game shows can cover a large part of it. It can be argued, however, that the Greek provision, at this point, is less strict than the provision of Article 4 of the Directive and therefore incompatible with it, for Article 3(1) of the Directive allows Member States to enact more detailed or stricter rules in the areas covered by it. Finally, Article 4 of Presidential Decree 236/92 requires a proportion over 50% for *works originating in the Member States of the Community* and not for "European works", while subsequently it defines "European works" by repeating literally Article 6 of the Directive. [Emphasis added].<sup>174</sup> We already know that the term "European works" does not include only works originating in the Community States but also those of other European countries. It seems to me that the meaning of this inconsistency is that the quota requirement refers

---

<sup>173</sup> P.D. Dagoglou, *Radio-Tileorasi Kai Sydagma*, (Athens-Komotini: A.N. Sakkoula Publications, 1990) at 49.

<sup>174</sup> *Supra*, note 169, art. 4(1)-(4).



to "European works" and not only to those of the Member States of the Community, because, otherwise, the law would have made a distinction and provided different quotas.

Lastly, Article 4(5) of the Presidential Decree, implementing Article 5 of the Directive, stipulates that "television stations are obliged to devote 10% of their broadcasts to European programmes produced by companies who are independent of and have nothing to do with television organizations". The wording "where practicable" is omitted again. Moreover, the Presidential Decree, in its Article 5, provides that in the case of retransmissions, via the use of frequencies, of television broadcasts originating from abroad, preference will be given to broadcasts in the language of an EC Member State and not to those in the language of a third country when the applications are more than the available frequencies. The rest of Presidential Decree 236/92 implements the Directive's provisions referring to advertising, sponsorship, protection of minors and right of reply.

In conclusion, Greece implemented the Directive without taking advantage of certain provisions and of some statements in its preamble. In particular, Article 4(2) allows Greece, if it cannot achieve the 51% for European works, to maintain the percentage of the year 1990. As a consequence, Greece could have enacted a lower quota for European works and attempt gradually to reach or even exceed the 51%. It could have also taken advantage of the wording "where practicable" of Article 4(1) and, therefore, could have enacted a less strict and more flexible provision in relation to the quota requirement for European works. Unlike France, Greece did not even take advantage of Article 8 of the Directive, which allows the adoption of a language policy. The preamble of the Directive states that countries "with a low audio-visual production capacity or restricted language area" will be taken into account, which actually expresses the Community's concern for its smaller Member States.<sup>175</sup> The Greek government did not exploit the fact that the Greek language is not a widely spoken one and thus needs

---

<sup>175</sup> *Supra*, note 11 at 24.

to be protected. In its preamble the Directive also states that the Member States retain their responsibility with regard to the content of programmes and that "the independence of cultural developments in the Member states and the preservation of cultural diversity in the Community ... remain unaffected."<sup>176</sup> Greece could have laid down cultural criteria regarding the content of television programming with the purpose of maintaining and disseminating its national culture.

Reviewing the Greek legislation (Presidential Decree 236/1992) one notes a more or less literal incorporation of the Directive's provisions. The definition of "European works", for example, referred to in Article 6 of the Directive is repeated in the Greek Presidential Decree 236/1992 without any attempt to specify its requirements and, thus, to close the loopholes it contains. Moreover, Greece has not developed any project or taken any measures with the objective of benefiting from or contributing to the Community's action programmes in the audiovisual sector.

In other words, Greece moved too quickly to implement the Directive in order to fulfil its obligations towards the European Community without, however, considering the current status of its television broadcasting sector and the Directive's impact on its national culture and language. Therefore, Greece should take steps towards a broadcasting policy on national culture and, following the example of France, on language as well. A language-based policy is a more obvious policy in Greece than in France since the Greek language is mostly restricted to Greece. However, while hammering out a broadcasting policy, the Greek legislator must bear in mind that national quotas and discrimination against other European productions are incompatible with the spirit of the Directive and the judgement of the European Court of Justice; on the contrary, the provision of language quotas is allowed. Finally, Greece should be ready to have its own contribution to the Community's action programmes as well as to take full advantage of them in order to benefit its television broadcasting industry.

---

<sup>176</sup> *Supra*, note 11 at 24.

## SECTION E: Conclusion

The European legal framework of television broadcasting consists primarily of two documents, which regulate transborder television: the Council of Europe's Convention on Transfrontier Television and the Community Directive 552/89. Most of the provisions of the two documents are similar, yet they are the result of partly different inspirations. The European Community is moving towards the creation of a common market on television broadcasting, while the Council of Europe is motivated by the principles of the free flow of information and ideas set out in the European Convention on Human Rights. The Community and the Council of Europe, however, show strong cultural concerns highlighting the need to protect the European cultural heritage while respecting and preserving the diverse features of national cultures and languages.

The guarantee of freedom of reception and retransmission of television programmes and the requirement for broadcasters to reserve for European works a majority proportion of their transmission time, excluding certain programme categories, are the main principles of both legal texts. The latter principle generates ambiguities with respect to its implementation and raises questions concerning its potential to fulfil its goals and its impact on countries with a low audiovisual capacity and a not widely-spoken language as well as its impact on broadcasters with a weak financial presence within national markets. The action programmes adopted for the development of European programme industry are an attempt to facilitate the realization of the above principles and to respond to the questions posed.

Greece has not ratified the Convention yet. Nevertheless, as a Member State of the European Community it is bound by Directive 552/89 and the general Community law applying to television broadcasting, namely, the rules relating to competition, freedom to provide services, freedom of establishment, and free movement of persons and goods. Therefore, any television broadcasting policy should take into account and function within the limits imposed by the relevant European Community law. The

Community Directive has been implemented but rather hastily. The main characteristic of this implementation is the lack of any initiative for cultural and linguistic protection. In addition, Greece does not seem ready to participate in and take advantage of the Community's action programmes.

### CHAPTER 3: A PROPOSAL FOR A GREEK TELEVISION BROADCASTING POLICY

#### SECTION A: A Review of the Current Status of Programming on Greek Television

In the first chapter it was mentioned that with respect to the content of the programmes, under the Greek law, the same principles must rule broadcasts on both public and private channels.<sup>1</sup> In particular, public and private broadcasters must abide by the principles, *inter alia*, of "good quality of broadcasts", "preservation of good quality of the Greek language" and "maintenance, promotion and dissemination of the Greek civilization and the Greek tradition".<sup>2</sup> These are general principles stipulated in the Greek legislation without, however, being elaborated into more definite obligations.

As was clarified in Chapter 1, domestic programmes and in particular series, films, evening news, game shows and some sports events, have high audience ratings.

Nevertheless, the profile of Greek television is as follows: firstly, while the overall share of Greek programmes is higher than that of foreign programmes, in terms of programme categories and particularly, of drama<sup>3</sup> and children's programmes, foreign productions predominate. On the other hand, domestic programmes (especially drama) hold high audience ratings. As a consequence, the two most popular channels, Mega Channel and Antenna, are moving towards increasing the percentage of Greek programmes and, in particular, of Greek drama -even broadcasting them during prime time. Their prime time is usually filled with Greek news, series and game shows. On

---

<sup>1</sup> *Act no 1730*, Hellenic Republic Gazette, 18 August 1987, Fasc. A, No. 145, art. 3(2). *Act no 1866*, Hellenic Republic Gazette, 6 October 1989, Fasc. A, No. 222, art. 6(2) first paragraph.

<sup>2</sup> *Act no 1730*, *ibid.* art. 3(2) (γ), (δ) and (στ).

<sup>3</sup> This term will be used in this chapter as a programme category which includes series, serials, soap-operas and films - cinema films and films made for television.

the contrary, the public broadcaster does not seem to follow any particular policy in respect of that issue. Prime time is usually covered by both Greek (mostly news, information broadcasts, sports) and foreign programmes. It must be said, however, that domestic films shown on ET-2 usually have a higher percentage than the foreign films. Secondly, the programming of private channels lacks diversity. Their broadcasting time is filled mostly with series, films, game shows, talk shows and light entertainment. There are no educational, music or special cultural broadcasts since they do not attract audiences and, thus, advertisers. Thirdly, the transmission of rather low quality<sup>4</sup> programmes is another element of the profile of Greek television. Finally, foreign programmes are in their largest part American. European productions, when they are broadcast, are usually shown on public television. On the other hand, broadcasters which operate national networks have to comply with a quota requirement for European works stipulated in the EC Directive and the Greek legislation which has implemented the Directive.

## **SECTION B: Objectives of a Greek Television Broadcasting Policy**

Apart from the requirement to provide people with complete and impartial information and apart from the principle of pluralism, two objectives should form part of the Greek television broadcasting policy. The first objective should be the promotion of programming diversity and quality. Television should not only entertain but also inform, educate the public as well as develop its cultural level. The second objective should be the compliance with the quota requirements of the European Community Directive 552/89<sup>5</sup> and at the same time the maintenance, promotion and dissemination

---

<sup>4</sup> The term "quality" encompasses technical as well as content criteria. In terms of content, originality, creativity, artistry, journalistic standards and professionalism are some elements which must be taken into consideration. On the contrary, violence, sex stereotyping, bad acting and lack of ingenuity especially in script-writing are some characteristics of a bad quality programme.

<sup>5</sup> *Council Directive No. 552 of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities*, O.J. Eur. Comm. (No. L 298) 23 (1989).

inside and outside the country of the national culture and language. According to Articles 4 and 5 of the Directive (and the similar provisions of the Greek legislation which has implemented the Directive), 51 percent of the broadcasters' transmission time must be reserved for European works, excluding news, sports events, games, advertising and teletext services, and at least 10 percent must be reserved for European works created by independent producers. We also know that the broadcasting legislation of the Member States cannot discriminate between national productions and those of other Member States. Any discrimination on the ground of nationality is incompatible with the European Community law.<sup>6</sup> The Directive allows for a cultural policy in favour of a particular language provided that it does not preclude the transmission of productions and co-productions of other Member States.<sup>7</sup> A language policy can be based on Article 8 of the Directive which entitles Member States to lay down more detailed or stricter rules in particular on the basis of language criteria.<sup>8</sup>

The Greek culture can be preserved and promoted through broadcasts which contribute to the flow and exchange of cultural expression as well as to the national consciousness and identity and reflect all the regions of Greece serving at the same time their special needs<sup>9</sup>. These Greek content television programmes as well as Greek language programmes (as defined below), whether produced in Greece or in any of the European countries referred to in Article 6 of the Directive, can fulfil a part of the quota requirement for European works. Our concern for that part is focused on the subject-matter of the programmes and the language of the production and not on the nationality of the producer or of the other persons engaged in their making. There is no obvious

---

<sup>6</sup> Commission of the European Communities, " 'Television Without Frontiers' Directive", Memo No. 48, Brussels, 4 October 1991, at 2. V. Salvatore, "Quotas on TV Programmes and EEC Law" (1992) 29:5 C.M.L. Rev. 967 at 983.

<sup>7</sup> Commission of the European Communities, *ibid.*

<sup>8</sup> Salvatore, *supra*, note 6.

<sup>9</sup> The stipulation has been borrowed by Art. 3(1)(l) and (m) of the Canadian Broadcasting Act, which refers to the programmes of Canada's public broadcaster, CBC (Canadian Broadcasting Corporation).

impediment to have such productions qualify as European works. A provision for such programmes would not contravene either the letter or the spirit of the Directive since the Directive, firstly, allows the issue of a language policy and, secondly, does not put any limits on the subject of the programmes. Its preamble states that the directive "does not affect the responsibility of the Member States and their authorities with regard to the organization... financing and the content of programmes; whereas the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community ... remain unaffected".<sup>10</sup> Greece has a rich historical and cultural background which can inspire not only a Greek but also a foreign producer and become an interesting subject for artistic as well as entertainment television programmes. It is inevitable that some of these programmes will be home-produced. National productions, however, qualify as European works. It is my view that an attempt to increase the share of Greek content and Greek language programmes on Greek television channels and include them in the quota requirement for European works does not violate the European Community law as long as there is no nationality requirement for their production and no preferential treatment in terms of transmission time in case they are home-produced.

In order to fulfil the second objective, it is essential to lay down some definitions. Following the example of French legislation,<sup>11</sup> I would suggest the adoption of the following definitions for "audiovisual works", "European audiovisual works" and "Greek language audiovisual works". To begin with, "audiovisual works" can be defined as programmes other than news, current affairs, sports events, game shows, advertising and teletext services. Therefore, Greek content audiovisual works will be other types of programmes, such as drama, and cultural broadcasts, which will draw their subject from Greek history, civilization and tradition and will reflect on the Greek life style, ideas and values. "National cultural broadcasts" can include a) arts programmes (traditional and

---

<sup>10</sup> *Supra*, note 5 at 24.

<sup>11</sup> *Décret no 90-66 du 17 janvier 1990*, J.O., 18 Janvier 1990, 757 and *Décret no 92-279 du 27 mars 1992*, J.O., 28 Mars 1992, 75 (discussed in Chapter 2).



modern art) and b) documentaries or other broadcasts referring to Greek civilization and tradition and depicting the modern Greek life-style and problems. The goal to maintain and promote the national culture should not be implemented only by broadcasts which praise the glorious Greek past and simply describe the rich national tradition. Cultural broadcasts should also present the evolution of Greek culture (in each area of cultural expression) and its contemporary aspect, expose weaknesses and deficiencies in life-styles, values and ideas and even encourage change. Greek thinking and creativity must be stimulated and not only flattered.

"European audiovisual works" will constitute audiovisual works (as defined above) within the meaning of Article 6 of the Directive. The French definition of "European audiovisual works" can be adopted by the Greek legislation since, implementing Article 6 of the Directive, the French legislation succeeded in clarifying the ambiguities the Directive seems to create.<sup>12</sup>

In addition, the definition of "audiovisual works of an original French expression" provided by Article 3 of Decree No. 92-279 of 27 March 1992<sup>13</sup> can be considered a good example to be emulated by the Greek legislation. Consequently, "Greek language audiovisual works" can be defined as audiovisual works "which are entirely or principally produced in the Greek language." The definition is neutral as to Member-States. It focuses only on language.

In the text two parts I will discuss how the foregoing objectives should be implemented by the public and private broadcasters in Greece.

---

<sup>12</sup> *Décret no 90-66, ibid.* art 6 as amended by Article 4 of *Décret no 92-279 (ibid)*. (Discussed in chapter 2).

<sup>13</sup> *Décret no 92-279, supra*, note 11. (Discussed in chapter 2).

## SECTION C: Public Broadcasting

After the introduction of private television broadcasting and the proliferation of commercial channels in Greece, the public broadcaster has no longer the monopoly in the field of television broadcasting. As a consequence, viewers are given the opportunity to choose and switch channels. The question raised is what the role of the public channels should be? Should they attempt to compete with commercial broadcasters or should they provide a distinctive programming and, in general, define more precisely than before their goals, the "raison d'être" of their own contributions to Greek television broadcasting?<sup>14</sup> In my opinion, public broadcasting in Greece should be reorganised, strengthened and well funded to provide programming identifiably different from that of commercial broadcasters. "A public broadcaster should above all, do what private broadcasters beholden to the demands of the market cannot do ... This is the obvious way to divide functions between the public and the private sector, a philosophically sound method of striking an otherwise elusive balance", Grafstein, referring to Canadian broadcasting policy, stated in its article "Out of Focus: A Thematic Critique of the Task Force on Broadcasting Policy".<sup>15</sup>

In consequence, the goals of the public channels should be defined as follows: firstly, they should offer a diverse and comprehensive programming. Informative, educative, cultural and entertainment programmes should be included in their programme schedule. As the Canadian Broadcasting Act requires for the Canadian Broadcasting Corporation (CBC), Canada's public broadcaster, the Greek public broadcaster should

---

<sup>14</sup> "Dutch Broadcasting and Culture" (Dec. 1991) 4 Hilversummary 1 at 4. (Hilversummary is a joint publication of Radio Netherlands International and Netherlands Broadcasting Corporation). J.G. Blumler, ed., *Television and the Public Interest: Vulnerable Values in West European Broadcasting*, (London: Sage Publications, 1992) at 205.

<sup>15</sup> L. Grafstein, "Out of Focus: A Thematic Critique of the Task Force on Broadcasting Policy" (1988) 46:1 University of Toronto Faculty of Law Review 271 at 284.

provide "a wide range of programming that informs, enlightens and entertains".<sup>16</sup> Secondly, special emphasis should be placed not on audience size but on programme quality, innovation, professionalism.<sup>17</sup> Public channels should strive for excellence whether they provide information and entertainment or educative and cultural broadcasts.<sup>18</sup> Productions which do not beguile viewers and prettify problems and situations but make them think, inspire their imagination and satisfy their aesthetics should be subsidized and broadcast by the public broadcaster. Its aim should be the education of the public's taste via cultural, educational and entertainment programmes of better quality even if this public constitutes only a small portion of the home viewers. Public channels should not make the statistics regarding viewership their primary motivation and should endeavour to make viewers familiar with the quality and intelligence of their television messages.<sup>19</sup> It is likely that attractive and higher in quality programmes will increase their audience share and thus force private broadcasters to raise the quality of their own programmes.<sup>20</sup> Nevertheless, even if that does not happen, public broadcaster must exist, 'firstly, as a quality exception among the plethora of commercial, private channels and, secondly, because only a public broadcaster can contribute essentially to the preservation and development of the national culture. For that reason, we suggest that the maintenance and promotion of the national culture and language should primarily be the responsibility of the national public channels - being their third goal<sup>21</sup>. Cultural objectives will not constitute a serious goal of a private

---

<sup>16</sup> *An Act Respecting Broadcasting and to Amend Certain Acts in Relation thereto and in Relation to Radiocommunication*, S.C. 1991, c. 11, s. 3(1)(l). [hereinafter Canadian Broadcasting Act].

<sup>17</sup> Blumler, *supra*, note 14 at 206. A. Pragnell, *Television in Europe. Quality and Values in a Time of Change*, (Manchester: The European Institute for the Media, 1985) at 42.

<sup>18</sup> Canadian Broadcasting Corporation (CBC), *The Strategy of the CBC*, (Ottawa: CBC, 1983) at 6.

<sup>19</sup> R. Manthoulis, *To Kratos tis Tileorasis*, (Athens: Themelio Publications, 1981) at 67.

<sup>20</sup> Blumler, *supra*, note 14 at 157.

<sup>21</sup> For example, Article 3(1) (l) and (m) of Canadian Broadcasting Act (*supra*, note 16) entrusts the fulfilment of Canadian Broadcasting's cultural goal to the public broadcaster, CBC.

broadcaster's operations if they contrast with profit maximization. The fact that its programmes may affect the cultural identity of the country will not change the private television station's basic motivation.<sup>22</sup> In principle, private broadcasters, driven by profit, do not include in their programme schedule broadcasts which would not attract large audiences and, therefore, would not bring them more advertising revenues. Tuning into a private channel, one expects to watch popular, mostly entertainment, programmes and not educational or cultural broadcasts.<sup>23</sup> This reality leads us to suggest that mainly the public and not the private channels should be entrusted with the achievement of the objectives of the Greek broadcasting policy and in particular with the protection and dissemination of the Greek culture and language. Finally, we can propose that the public broadcaster should also commit itself to present Greece into the world by producing works of high standard and quality intended to be retransmitted in the European and other countries.

In addition, the public channels, ET-1 and ET-2, since they operate on a national scale, have also the obligation to abide by the EC Directive's quota requirement.<sup>24</sup> In compliance with their goals, public channels can fulfil the quota requirement with cultural, educational and entertainment programmes produced in Greece or in any other European country in accordance with Article 6 of the Directive, which qualify as European works. As was explained above, a part of the quota obligation can be covered by Greek content audiovisual works, especially Greek drama and national cultural broadcasts, and by Greek language audiovisual works, regardless of domestic origin. By eventually increasing the percentage devoted to European works, public channels can also

---

<sup>22</sup> A. Lapointe & J.-P. Le Goff, "Canadian Television: An Alternative to Caplan-Sauvageau" (1988) 14:3 Canadian Public Policy 245 at 248.

<sup>23</sup> C. Lazos, "Programmatismos Kai Exousia stin Elliniki Tileorasi: To Avevaion Mellon ton Kratikon Kanalion" (1986) *Adie*, No. 318, 32 at 33-34. K. Acheson & C. Maule, "Canadian Content Rules: A Time for Reconsideration" (1990) 16:3 Canadian Public Policy 284 at 289.

<sup>24</sup> *Presidential Decree no 236*, Hellenic Republic Gazette, 16 July 1992, Fasc. A, No. 124, art. 4(1). *Supra*, note 5, art. 9.

increase the part of the programming which promotes the national culture and language. If the public broadcaster pays special attention to language and national cultural programmes, it will manage to maintain the national culture as well as to exhibit it, via transborder broadcasting, to other European countries. Therefore, pursuing a cultural policy in the area of television broadcasting, Greece can contribute to the preservation of cultural diversity in Europe to which the preamble of the Directive refers. Furthermore, the public channels should incorporate in their programming not only national cultural broadcasts but also programmes which reflect the culture of other European countries and thus expose their home audience to the various European cultural identities. Consequently, by transmitting broadcasts devoted to domestic as well as to other European cultures, public broadcasters can become a significant vehicle of cultural exchange, contribute to the maintenance of the European cultural heritage and to the creation of a mutual understanding among the EC citizens and thus facilitate the European integration.

Another obligation which can be enacted for the public channels, following the example of the French broadcasting legislation,<sup>25</sup> is to request them to devote at least 60 percent of the high viewing hours, namely the hours between 6:30 pm and 11:00 pm,<sup>26</sup> as well as of the total annual time devoted to the broadcasting of audiovisual works, to European audiovisual works and at least 40 percent to Greek language audiovisual works. The public channels should also try to include in these audiovisual works the best entertainment and cultural broadcasts. The rationale of this quota requirement is the protection of the Greek language. Likewise, since we cannot impose national quotas - as being incompatible with Community law - and request the public broadcaster to fulfil a part of the high viewing hours with home-produced audiovisual works, at least, during these hours, we should present to Greek viewers some

---

<sup>25</sup> *Décret no 90-66, supra*, note 11, arts 8 and 9 and *Décret no 92-279, supra*, note 11, arts 7 and 8.

<sup>26</sup> Prime-time is between 8:00 pm and 11:00 pm. Nevertheless, the total time from 6:30 pm to 11:00 pm should be considered high viewing hours since during that time a large proportion of the home-audience watches television.

programmes produced (in Greece or in another European country or even outside Europe) in their own language.

We can also suggest that, with the purpose of better achieving their goals, the two public channels should closely cooperate in any sector of television broadcasting as well as organize their programme schedules in order to avoid transmitting simultaneously the same types of programmes and, therefore, satisfy the different needs of people during a time zone. Viewers will be enabled to switch public channels if the other one shows a programme which is not to their liking. In addition, while striving for the same goals as general content channels, the two public channels can differentiate themselves in the sense that one can place emphasis for example on entertainment and children's programmes and the other on cultural, educational and information broadcasts. That will help them to divide responsibilities more easily and develop an expertise in certain programme categories. Also, a non-commercial policy pursued by the public broadcaster is very likely to succeed if it does not result in boring and non-attractive programmes. "Serious" broadcasts can entertain and "entertainment" programmes can challenge.<sup>27</sup> Moreover, imported programmes must be diversified as regards the country of their origin (within, however, the limits set out by the European Directive), so that public television can be a "window" to the entire world and give Greek viewers the opportunity to watch the best programmes of global television.<sup>28</sup> However, it is most important that the only concern of ERT-AE's governors and employees be the successful accomplishment of its mandate, namely, the diversity and quality of programmes, the protection and promotion of the Greek culture and language - not submission to government's will and orders. Therefore, there should also be a restructuring of the public broadcaster. In particular, the membership in the board of governors should be expanded, so that it can cope with its duties faster and more effectively. All the governors should be distinguished in arts, journalism and sciences and have special

---

<sup>27</sup> *Supra*, note 19 at 68.

<sup>28</sup> *Ibid.*

knowledge and experience in television activities. They should be elected by the groups or organizations they belong to and only formally appointed by the government for a 5 year office term instead of a three-year office term. The Chairman and Vice-Chairman should be elected among and by the governors and not appointed by the government. This may appear to be a radical solution to the problem of appointing governors. However, given the degree to which there has been political interference with Greek public broadcasting in the past, somewhat radical solutions may be needed to ensure independence. The Greek law which rules public broadcasting (Act 1730/1987) provides for administrative bodies and institutes, such as the "Radio and Television Programme Production and Marketing Company, ERT-AE" and the "Institute of Audiovisual Media" (both discussed in chapter 1), which, if they are determined to work hard, can assist the public broadcaster in its goals. We could suggest a more detailed structure for the public broadcaster, yet this is not what public television in Greece actually needs since even detailed provisions can simply be violated. The current imperative is the ERT-AE's governors and employees and above all the Greek government to change their approach towards television's mandate. As long as television is seen as only a means of propaganda and not as a cultural vehicle, the image of public television will remain the same. We need knowledgeable, open-minded, independent people who, free from any political intervention, will work hard to organize and improve ERT-AE. Above all, we need a government which will fund and support public broadcasting without interfering with its operation. Finally, in order to achieve its goals, public broadcasting should be funded adequately even if its audience ratings are not high due to the competition from commercial broadcasters.<sup>29</sup> In the long run, quality programmes, if they are provided in sufficient numbers, are more likely to compete successfully with commercial programme materials.<sup>30</sup> In Canada, for instance, while American entertainment programmes have very high audience share, CBC's good quality shows or mini-series

---

<sup>29</sup> Pragnell, *supra*, note 17 at 41.

<sup>30</sup> R. Negrine & S. Papathanassopoulos, *The Internationalization of Television*, (London-New York: Pinter Publishers, 1990) at 163.

have a significant audience share as well<sup>31</sup>. CBC, which is partly funded by the national budget,<sup>32</sup> has succeeded in providing Canadians with a variety of services and good quality programmes particularly with respect to programme categories of news, public affairs and sports events.<sup>33</sup> It has already been mentioned that the public broadcaster in Greece, ERT-AE, derives its income from the fees paid by those who possess a TV set, from the national budget, from advertising revenues and from other financial sources.<sup>34</sup> Advertising revenue should not be the principal means of funding for public television, for it normally affects programming decisions. The reason is that certain types of programmes do not attract advertisers, and thus broadcasters, wishing to maximize profits, favour entertainment programmes, which usually have a high audience share.<sup>35</sup> On the other hand, suggesting the total exclusion of advertisements from public television would result in the loss of substantial revenue. Thus, it is better to propose that the public broadcaster be subject to stricter advertising rules. In particular, it can be requested either to show advertisements only at the beginning and end of a programme or to avoid inserting them during certain programmes such as news and current affairs, cultural, educational and religious broadcasts, children's programmes, documentaries and other information broadcasts. The Greek government should be generous when funding the public channels but keep a distance from their operation and decisions. Also, private sponsoring and funding of certain programmes by viewers can be alternatives for the financing of public broadcasting. Lastly, given the lack of financial sources and the fact the government will not probably give priority to broadcasting in the national budget, one

---

<sup>31</sup> S.M. Rapp-Jaletzke, *Broadcasting in Canada and its Influence on the Canadian Identity*, (Montreal: McGill University - Department of Political Science, 1991) (LL.M. Thesis) at 45.

<sup>32</sup> T.L. McPhail & B.M. McPhail, *Communication: The Canadian Experience*, (Toronto: Copp, Clark Pitman Ltd., 1990) at 165. *Ibid.* at 80-81.

<sup>33</sup> McPhail, *ibid.* at 164. *Supra*, note 31.

<sup>34</sup> *Act no 1730*, *supra*, note 1, art. 14(1) (α) - (δ).

<sup>35</sup> T. Vormann, *Cultural Sovereignty and Broadcasting: Canadian Content Rules*, (Montreal: McGill University - Faculty of Law, 1991) (LL.M. Thesis) at 125-126.



may have to review the viability of both public channels. The option of privatizing ET-3 and ET-2 and creating one powerful public channel may have to be considered seriously.

#### **SECTION D: Private Broadcasting**

It has already been explained that private broadcasters operating an economic enterprise and striving for profit, are not expected to incorporate in their programme schedule broadcasts other than those which attract large audiences and bring them more advertising revenue. In addition, high quality programmes may not be scheduled often if the private broadcasters cannot afford it. The main objective of their policy is not likely to be the provision of a varied programming which will include educational and cultural broadcasts or the protection and promotion of the national culture and language. On the other hand, private broadcasters constitute a part of the national broadcasting system and use radio frequencies which are public property. Hence, they should not be left completely free but be obligated to contribute in some way to the implementation of the objectives of the national broadcasting policy. The phenomenon of the single Greek pay TV channel, which transmits only foreign and mostly American productions, should not be followed by other private channels and its continuance should not be allowed<sup>36</sup>. The practice of almost all the private channels to schedule more American programming and few European productions especially in relation to the programme category of drama must be restricted. For the time being, only Mega Channel and Antenna appear to move towards raising the share of Greek programmes, mostly Greek drama, even in prime time.

One, however, has to be sceptical of whether a quota requirement should be imposed on private broadcasters and how it should be structured, for quotas do not guarantee the production and broadcasting of high-quality programmes, and broadcasters,

---

<sup>36</sup> See discussion about quotas and other proposals for private broadcasting.

if they cannot afford to meet the quota obligation, will find ways to avoid it. The Canadian example is illustrative. As has already been mentioned, Canadians prefer American programming. The Caplan-Sauvageau report noted that Canadians watch a preponderance of American programmes and not enough domestic high-quality productions.<sup>37</sup> The Federal Cultural Policy Review Committee, co-chaired by Louis Applebaum and Jacques Hebert, reported that "Canadian viewers spend 80% of their time watching foreign programmes".<sup>38</sup> In addition, the Caplan-Sauvageau report stated that almost half of all English television viewing is focused on drama. However, only 2% of the drama seen on English-language television is Canadian. In Quebec, the situation is less dramatic, yet viewing of English-language television and in particular of American programmes is still relatively high.<sup>39</sup> The same report provides the following viewing time percentages for Canadian content programmes: news: 89%, public affairs: 62%, sports: 71%, drama: 2%, and variety-music-quiz: 18%.<sup>40</sup>

The main tool of the CRTC's (Canadian Radio-Television and Telecommunications Commission) effort to promote the production and presentation of Canadian content programmes is the imposition of quotas by the issue of generally applicable regulations and by way of a condition of licence.<sup>41</sup> Pursuant to Canadian Content Regulations, public and private licensees must devote "not less than 60% of the broadcast year and of any six month period specified in a condition of licence to the broadcasting of Canadian programs".<sup>42</sup> Moreover, a public licensee must also devote

---

<sup>37</sup> *Supra*, note 22 at 246.

<sup>38</sup> *Supra*, note 31 at 58.

<sup>39</sup> *Supra*, note 22 at 246-247.

<sup>40</sup> M.S. Shedd, E.A. Wilman & R.D. Burch, "An Economic Analysis of Canadian Content Regulations and a New Proposal" (1990) 16:1 *Canadian Public Policy* 60 at 70, note 1.

<sup>41</sup> A. Wylie, "A New Broadcasting Act: A New Dial or Fine-Tuning?" (1988) 9:3 *Canadian Competition Policy Record* 14 at 17.

<sup>42</sup> CRTC, *Public Notice CRTC 1987-8*, Ottawa, 9 January 1987, s. 4(6).

not less than 60% of the total time between 6:00 pm and midnight (prime time) to the broadcasting of Canadian programmes.<sup>43</sup> A private licensee is required to devote 50% of that time to the broadcasting of Canadian programmes.<sup>44</sup> Pay-TV services are also subject to quota requirements. Pay-TV operators have to devote not less than 30% of the prime time to Canadian programmes and not less than 20% of the rest of the broadcast day, calculated on a semi-annual basis. In the past, they were obliged to raise the overall and prime time Canadian content from 30% to 50%.<sup>45</sup>

"Canadian programme" is defined on the basis of the citizenship of the persons who perform key functions in a programme production and on the percentage of expenditures on services provided by Canadians.<sup>46</sup> In general, a programme will qualify as Canadian under the following conditions: firstly, the producer and "all individuals fulfilling producer-related functions" must be Canadian.<sup>47</sup> Secondly, it has a Canadian director or writer and at least one of the leading performers is Canadian.<sup>48</sup> Thirdly, a "point system" is used to evaluate the degree of Canadian content. In order to qualify as a Canadian production, a programme must earn at least six "points" based on the Canadian citizenship of those involved with the production, as follows: the director is allocated two points; the writer is also allocated two points; the first leading performer, the second leading performer, the head of art department, the director of photography, the music composer and the editor are allocated one point each.<sup>49</sup> The key creative

---

<sup>43</sup> *Ibid.* s. 4(7)(a).

<sup>44</sup> *Supra*, note 42, s. 4(7)(b).

<sup>45</sup> *Supra*, note 35 at 66.

<sup>46</sup> Acheson & Maule, *supra*, note 23 at 285.

<sup>47</sup> CRTC, *Public Notice CRTC 1984-94*, Ottawa, 15 April 1984, at 2.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

functions can vary depending on the type of production.<sup>50</sup> Fourthly, "at least 75% of total remuneration paid to individuals, other than the producer and key creative personnel ... or for post-production work, must be paid to, or in respect of services, provided by, Canadians; and at least 75% of processing and final preparation costs must also be paid for services provided in Canada".<sup>51</sup> This point system varies depending on the programme category. There are specific provisions for animation, musical video shows, sports events or tournaments, co-ventures and production packages.<sup>52</sup> Also, drama which is produced by a licensee or an independent production company, achieves ten points and is broadcast between 7:00 pm and 10:00 pm (if it is a dramatic children's programme, during the time children commonly watch television) is awarded a time bonus, namely, a 150% time credit.<sup>53</sup> For example, if it is a one-hour programme, it will count as one and a half hours of Canadian content.

We note that the point and expenditure system is only concerned with the nationality of the participants and not with the subject-matter of the Canadian programme. For example, a television programme, whose theme is the mistreatment of a Canadian minority, is written, created, distributed by Canadian citizens, but is produced by a philanthropic group based in another country, is not considered Canadian because of the nationality of the producer. Another example is to suppose that Australians made a film of Emily Carr and Canadians made a film of Sidney Nolan. According to the point system, the first film constitutes foreign content, while the second one qualifies as Canadian.<sup>54</sup> Moreover, the quota requirement includes all the kinds of programmes, even news, public affairs and sports events. The current regulatory regime

---

<sup>50</sup> *Supra*, note 47 at 3.

<sup>51</sup> *Ibid.* at 3-4.

<sup>52</sup> CRTC, *Public Notice CRTC 1988-105*, Ottawa, 27 June 1988. CRTC, *Public Notice CRTC 1987-28*, Ottawa, 30 January 1987 at 4 and foll. *Supra*, note 47 at 6-13.

<sup>53</sup> *Supra*, note 47 at 13-14.

<sup>54</sup> Acheson & Maule, *supra*, note 23 at 285-286.

is characterized by a very long prime time since it allows news reports to be broadcast from 6:00 pm to 7:00 pm and from 11:00 pm to 12:00 pm while the peak viewing hours from 7:00 pm to 11:00 pm can be fulfilled by American programmes.<sup>55</sup> In addition, averaging over the entire year allows broadcasters to show Canadian programmes during the low audience summer months.<sup>56</sup> The Content Regulations have resulted in the availability on all Canadian stations of high quality news, public affairs and sports. However, programme categories which are expensive to produce, namely, drama and light entertainment, and domestic children's programmes have been, in principle, neglected by the private sector. In order to minimize possible loss from complying with the Canadian content quota, many private stations have recourse to inexpensive quiz-shows and similar broadcasts scheduled at low viewing hours.<sup>57</sup> In other words, Canadian private broadcasters have found ways to get around the quota requirement in an attempt to prevent any profit loss since it is less expensive for them to purchase American programming than to produce or acquire domestic programmes.<sup>58</sup>

The Greek situation differs from the Canadian one in the sense that Greeks favour domestic productions, and for that reason the two popular channels, Mega Channel and Antenna, try to increase the share of Greek programmes even during prime time. Moreover, national quotas cannot be enacted as being incompatible with the European Community law. The reality, however, is the dominance of American programmes and a minimum of European productions on Greek private television. Taking that into consideration, as well as the fact that the number of private channels<sup>59</sup> is increasing and that companies of other Member States of the European Community can establish

---

<sup>55</sup> *Supra*, note 40 at 65.

<sup>56</sup> *Ibid.*

<sup>57</sup> J. Meisel, "Escaping Extinction: Cultural Defence of an Undefended Border" (1986) 10:1-2 Canadian Journal of Political and Social Theory 248 at 257.

<sup>58</sup> *Ibid.* at 150-151.

<sup>59</sup> Municipality stations are included since they operate as the private stations.

television stations in Greece (according to the freedom of establishment), I would propose the imposition of language quotas along the lines of the French legislation<sup>60</sup>. The quotas will be imposed on the Greek language audiovisual works (without any nationality requirement for their production), which excludes the programme categories of news, public affairs, sports events, game shows and teletext services; therefore, broadcasters will not be able to fulfil the quotas with these types of programming which are inexpensive to produce. The quotas would also refer to high viewing hours (from 6:30 pm to 11:00 pm) and to the total annual time devoted to the broadcasting of audiovisual works. It can be assumed that private broadcasters will not schedule Greek language audiovisual works during the low audience months because it is expected that these programmes and particularly drama will bring them a large proportion of the home audience, taking into consideration the viewers' preference for Greek programming. In particular, private broadcasters will be required to reserve for Greek language audiovisual works at least 60% of the total annual time devoted to the broadcasting of audiovisual works as well as of the high viewing hours (6:30 pm to 11:00 pm). Nevertheless, private broadcasters which have obtained a licence to operate a national network, also have to comply with the EC Directive. In that case, the quota requirement should be reformed as follows: the private broadcaster would be asked to devote at least 60% of the above time periods to European audiovisual works and at least 40% to Greek language audiovisual works.<sup>61</sup> Furthermore, every private broadcaster would have to pay, at the beginning of the year, a licence fee which would be refunded if it meets its quota obligations or retained in case of non-performance. This is the rule in Canada, where by virtue of ss. 11(1) and (2) of the Canadian Broadcasting Act, the Commission (CRTC) can make regulations which "may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to ... the performance of the licensees in relation to objectives established by the Commission,

---

<sup>60</sup> *Supra*, note 25.

<sup>61</sup> *Ibid.*

including objectives for the broadcasting of Canadian programs:"<sup>62</sup>. This is a more flexible measure than the suspension or revocation of the licence for the case of non-compliance with the quota requirement.<sup>63</sup> The amount of money collected by the retained licence fees can be used for the funding of national and European productions as it will be explained below. Nevertheless, it must be borne in mind that private broadcasters who operate national networks have no choice but to fulfil the quota requirement for European works because, otherwise, they will be held liable in accordance with the provisions of the EC Directive even if they have paid their licence fee to the Greek government. Finally, with respect to the licence fee, its amount will be calculated on the basis of the television station's annual revenues. In addition, the amount that will be refunded or retained will be varied according to the performance of the particular private broadcaster in meeting the quota requirement. For example, if a local private channel managed to meet half the quota for Greek language audiovisual works, half of the licence fee will be returned.

An alternative requirement for private broadcasters could be to invest a certain amount of their annual net turnover in the production of Greek language and European audiovisual works. The Canadian and French legislation provides such production quotas. In Canada, broadcasting stations, general interest Pay TV, specialty services and cable undertakings are subject to requirements for expenditures on Canadian programmes, that depend on the broadcaster's financial performance.<sup>64</sup> These requirements become a condition of licence.<sup>65</sup> In particular, the CRTC requires licensees to meet the levels of expenditure on Canadian programming committed by them

---

<sup>62</sup> *Supra*, note 16, ss. 11(1) and (2). However, CRTC has not implemented this policy, choosing instead to rely on adjustments to licence fees and expenditure requirements for Canadian programming: see discussion accompanying footnotes 64-67 below.

<sup>63</sup> *Supra*, note 35 at 83.

<sup>64</sup> *Ibid.* at 80.

<sup>65</sup> Acheson & Maule, *supra*, note 23 at 287.

in their Promise of Performance for the first year and in each of the next five years increase this expenditure in accordance with their revenue growth.<sup>66</sup> In the absence of firm commitments from licensees, the Commission imposes expenditure requirements as a condition of licence taking into account each licensee's revenues.<sup>67</sup>

French Decree No. 90-67 of 17 January 1990 provides private television services which broadcast by hertzian waves as well as national television companies<sup>68</sup> with two choices: a) "soit de consacrer chaque année au moins 15 p. 100 du chiffre d'affaires annuel net de l'exercice précédant à la commande d'oeuvres audiovisuelles d'expression originale française et de diffuser un volume horaire annuel minimum de cent vingt heures d'oeuvres audiovisuelles européennes ou d'expression originale française n'ayant pas fait l'objet d'une diffusion en clair sur un réseau hertzien terrestre à caractère national et dont la diffusion débute entre 20 heures et 21 heures;"<sup>69</sup> and b) "soit de consacrer chaque année au moins 20 p. 100 du chiffre d'affaires annuel net de l'exercice précédant à la commande d'oeuvres européennes et au moins 15 p. 100 de ce même chiffre d'affaires à la commande d'oeuvres audiovisuelles d'expression originale française".<sup>70</sup>

Greek private broadcasters who broadcast nationally can be requested, as a condition of their licence, to devote a certain percentage of their annual net turnover to

---

<sup>66</sup> CRTC, *Public Notice CRTC 1989-27*, Ottawa, 6 April 1989, at 26.

<sup>67</sup> *Ibid.* at 24.

<sup>68</sup> *Décret no 90-67 du 17 janvier 1990*, J.O., 18 Janvier 1990, 759, art. 8.

<sup>69</sup> *Ibid.* art. 9(a) as amended by *Décret no 92-281 du 27 mars 1992*, J.O., 28 Mars 1992, 75, art. 3(I). In English, the provision has as follows: either to devote to audiovisual works of an original French expression, every year, at least 15% of their annual net turnover and to broadcast annually at least 120 hours of European audiovisual works or audiovisual works of an original French expression, which have not been broadcast on an hertzian terrestrial national network and whose transmission starts between 8:00 pm and 9:00 pm.

<sup>70</sup> *Supra*, note 68, art. 9(b) as amended by *Décret no 92-281 du 27 mars 1992*, J.O., 28 Mars 1992, 75, art. 3 (II). In English, the provision has as follows: or to devote to European works, every year, at least 20% of their annual net turnover and at least 15% of the same turnover to audiovisual works of an original French expression.



the production of Greek language audiovisual works as well as of other European audiovisual works. This percentage should not be fixed by law but must depend on the particular licensee's financial performance - the goal being the increase of the expenditure percentage in the following five years. The system of licence fees discussed above can be used as a sanction for non-compliance with the production quotas.

The enhancement of programme diversity in the private sector can be achieved by licensing private broadcasters to provide specialty services. A specialty service would focus wholly on a particular category of programming such as news, educative broadcasts, cultural broadcasts, entertainment programmes, or children's programming. It is expected to employ expert staff and transmit desirable programmes if it wants to have a significant audience and succeed in its field.<sup>71</sup> General-purpose private broadcasters, due to the competition resulting from the existence of specialty services, will be forced to differentiate themselves and, thus, contribute to better and more diversified programming.<sup>72</sup> Specialty services would have to comply with the same quota requirements for Greek language and other European audiovisual works as the other private broadcasters and would be subject to the same licence fee system.

The foregoing constitute suggestions for the regulation of private broadcasting with the purpose of having private broadcasters share in the promotion of the objectives of the Greek television broadcasting policy. One hopes that a strong public broadcaster will succeed in increasing its audience ratings and motivate or even force private broadcasters to reform their programme schedules so as to raise the qualitative level of their programming.

---

<sup>71</sup> *Supra*, note 15 at 300.

<sup>72</sup> *Ibid.* at 299.

## SECTION E: Funding Initiatives

Quotas alone are not an effective tool for the promotion of high quality programming and of certain programme categories such as cultural broadcasts. They cannot persuade private broadcasters to schedule high-quality programming and more Greek language and other European audiovisual works instead of purchasing inexpensive American programmes.<sup>73</sup> In addition, the public broadcaster needs assistance for the accomplishment of its goals. The setting up of a Broadcast Fund with the purpose of investing in selected types of programmes is a more promising policy since it will make these programmes price competitive and, thus, provide private broadcasters with an economic motivation to transmit them as well as will assist public television in its role.<sup>74</sup>

For that reason, Canada established the Canadian Broadcast Production Development Fund and the Netherlands, the Dutch Cultural Broadcasting Productions Promotion Fund. The Canadian Fund was established in 1983 and is administered by Telefilm Canada.<sup>75</sup> It consists of a Principal and an Auxiliary Fund whose purpose is to support financially "the development and production of projects produced by the private sector and sold for broadcasting to a public or private Canadian broadcasting company".<sup>76</sup> The goal of the Auxiliary Fund in particular is "to provide additional support for the production of Canadian television programmes which are either exceptional in terms of quality and Canadian content or are produced originally in the

---

<sup>73</sup> C. Hoskins & S. McFadyen, "Television in the New Broadcasting Environment: Public Policy Lessons from the Canadian Experience" (1989) 4 *European Journal of Communication* 173 at 187-188.

<sup>74</sup> *Supra*, note 35 at 94.

<sup>75</sup> C. Hoskins & S. McFadyen, "The Canadian Broadcast Program Development Fund: An Evaluation and Some Recommendations" (1986) 12:1 *Canadian Public Policy* 277 at 277.

<sup>76</sup> Telefilm Canada, *Canadian Broadcast Program Development Fund, Policies 1992-93*, (Montreal: Telefilm Canada, 1992) at 1.

French language".<sup>77</sup> There is also the Versioning Assistance Fund for the dubbing and subtitling of Canadian productions in both official languages.<sup>78</sup> Private Canadian production companies and independent producers are eligible to be assisted by the Fund.<sup>79</sup> However, a letter of intent to show the programme within two years of its completion is required to be obtained from an eligible broadcaster,<sup>80</sup> namely the CBC, private over-the-air broadcasters, provincial educational broadcasters and satellite-to-cable television undertakings which provide basic, and discretionary cable services.<sup>81</sup> Telefilm Canada has discretion over the form of investment in a particular programme. It can be a loan, a loan guarantee, equity or some mix of these. For every \$1 investment from the Broadcast Fund, the producer is required to raise at least \$2.<sup>82</sup> The broadcasters' participation in an independent production will take the form of fees paid for the acquisition of broadcast rights.<sup>83</sup> Telefilm Canada finances both the development and production stage of a programme. Its development funding is apportioned in three phases: a) "conception and development of the first draft of the script", b) "development of subsequent drafts of the script" and c) "shooting script and production development".<sup>84</sup> After the completion of the first development stage, only scripts with a real potential may qualify for financing.<sup>85</sup> The programme categories which are eligible for funding are drama, children's programming, documentaries and

---

<sup>77</sup> *Ibid.*

<sup>78</sup> *Supra*, note 76 at 7.

<sup>79</sup> *Supra*, note 73 at 179. *Supra*, note 76 at 8.

<sup>80</sup> *Supra*, note 73 at 179. *Supra*, note 76 at 7.

<sup>81</sup> *Supra*, note 76 at 9.

<sup>82</sup> *Supra*, note 73 at 178.

<sup>83</sup> *Supra*, note 76 at 16.

<sup>84</sup> *Ibid.* at 12.

<sup>85</sup> *Supra*, note 76 at 13.

variety programming.<sup>86</sup> The standard financial participation of the Telefilm Canada is one-third of a programme's production budget. Its maximum investment is 49% of the production costs.<sup>87</sup> A high quality production scoring 10 Canadian content points and presenting "a distinctive Canadian point of view or Canadian setting" may, in exceptional cases, be funded up to 49% of the production costs. An 8 or 9 Canadian content point production with a Canadian writer, director and one leading actor may be financed up to 40%. Telefilm Canada will not normally support financially productions with less than 8 points and never supports productions with less than 6 points.<sup>88</sup> Once again, we note that the nationality of the inputs and not the subject of the programme is the criterion for the Broadcast Fund's financial support<sup>89</sup>. On the contrary, the purpose of the Dutch Fund is to financially support the development and production of "programmes which reflect Dutch culture".<sup>90</sup> It is stipulated in the Dutch Media Act and in the statutes of the Promotion Fund that the funds will be supplied for the development and actual production of "special" Dutch cultural programming.<sup>91</sup> This concept needs to be explained further. The Board of Governors of the Foundation considers that it includes important cultural manifestations and, for the time being, Dutch language drama.<sup>92</sup> These programmes must be broadcast by one of the broadcasting associations or the Netherlands Programme Foundation (NOS).<sup>93</sup> The Fund's maximum contribution is

---

<sup>86</sup> *Supra*, note 76 at 11. *Supra*, note 73 at 174.

<sup>87</sup> *Supra*, note 76 at 14. *Supra*, note 73 at 179.

<sup>88</sup> *Supra*, note 76 at 14-15.

<sup>89</sup> Note, however, that at least one commentator has been skeptical about the success of the Telefilm fund: see H.N. Janisch, "Aid for Sisyphus: Incentives and Canadian Content Regulation" (Discussion paper prepared for the Conference on "The Power of the Purse: Financial Incentives as Regulatory Instruments"), University of Calgary, October 12-13, 1990), [unpublished].

<sup>90</sup> *Broadcasting*, Fact Sheet C-10-E 1992 (Ministry of Welfare, Health and Cultural Affairs) at 6.

<sup>91</sup> "Dutch Broadcasting and Culture" (Dec. 1991) 4 *Hilversum* 1 at 5.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Supra*, note 90.

50% of the total production budget.<sup>94</sup> The weak point of the Dutch Fund appears to be the fact that it acquires money from regular broadcasting income, that is advertising revenues and licence fees, and, therefore, it does not supply NOS and the other broadcasting organisations with extra money with the purpose of subsidizing cultural programmes.<sup>95</sup>

Having in mind the Dutch example as well as the Canadian example, which actually succeeded in promoting significantly the production of Canadian programming,<sup>96</sup> we suggest the creation of a similar Fund in Greece. The Fund should finance not only the production but also the development stage of a programme, as in Canada. Script and project development and pilot programmes should be eligible for funding. The Fund would support only productions which are made in Greece. However, the nationality of the participants and the producer must not be an eligibility criterion for two reasons. Firstly, that would violate the European Community law given that no discrimination is allowed on the ground of Member State nationality. Secondly, our concern should be with the protection and promotion of the national culture and language and, thus, with certain types of programmes and their subject-matter, irrespective of the national or not character of their production. Therefore, there will be no discrimination against foreign producers who are established in Greece or come to produce in Greece. For instance, an English producer, who comes to Greece to shoot a film on Greek language, with or without Greek content and for that purpose employs Greek and English actors and personnel, should be eligible to obtain financial aid from the Greek Fund. This policy would encourage foreign companies or individuals to come and produce in Greece and would help local producers to develop expertise.

---

<sup>94</sup> *Supra*, note 91.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Supra*, note 73 at 181.

Eligible productions should be Greek language audiovisual works and in particular drama, national cultural broadcasts, broadcasts which refer to the cultures of other Member States of the Community, documentaries and children's programming. National cultural programmes produced in the language of any other Member State of the European Community as well as co-productions should also be eligible for funding.

High-quality co-productions and Greek language audiovisual works whose broadcasting is not to be confined to the national market but exported to the larger European broadcasting market, should acquire the Fund's higher financial participation, that is 50% of the production costs. Greece should make an effort to create a strong presence within the European market. The exchange of cultural and other programmes especially via public television and the promotion of high-quality co-productions and Greek language productions, whether or not domestic and with or without a Greek theme, can constitute Greece's contribution to the advancement of European productions as well as to the preservation of the cultural diversity in Europe.

Furthermore, talented people who are engaged in television activities in Greece should be financially supported and encouraged to express their creativity in television programmes which will entertain or educate the viewers. Training seminars organized for people involved in television activities can also be financed by the Fund.

The Fund should provide financial assistance only to private production companies and independent producers and not to broadcasting organisations. This policy will diversify the source of programming and will develop competition between private producers as well as between these producers and in house, private or public, programme productions.<sup>97</sup> Moreover, in order to establish their reputation and exploit export markets, independent private producers have a greater motivation to produce high-quality programmes than do private broadcasters producing in-house. The latter's main concern

---

<sup>97</sup> *Supra*, note 73 at 185.

is packaging programming for transmission and complying with the quota requirements at minimum cost.<sup>98</sup> However, like in Canada, the producer will have to make an agreement with a broadcaster, public or private, which will guarantee the transmission of the production within two years of its completion. Only broadcaster-supported productions should be funded. The rationale is that money should not be wasted on programmers that will be left on the shelf.<sup>99</sup>

Following the Canadian and Dutch examples, the financial participation of the Fund can be one-third of the programme's production budget. Projects with a high level of quality, Greek language drama and cultural broadcasts as well as high-quality co-productions and Greek language audiovisual works which are intended to be exported can be financed up to 50% of the production costs. Broadcasters will participate in the funding by paying fees for the acquisition of broadcast rights, according to the Canadian example. The subsidies will benefit not only the producers but also the broadcasters since they will have to meet only part of the production costs.<sup>100</sup>

The Fund can derive its income firstly, from the amount of licence fees that will be retained in case private broadcasters do not observe their quota obligations. Secondly, pursuant to Article 9 of the Greek Act 1866/89,<sup>101</sup> a private broadcasting company is obliged to submit to the Greek government, every year, a percentage of its net profits. The amount is stipulated in its contract with the Greek government and is to be raised in accordance with the company's net revenue growth. This amount of money can also be included in the Fund. Thirdly, money could also accrue from a general tax, even though raising taxes with the purpose of subsidizing producers is not the most popular

---

<sup>98</sup> *Supra*, note 73 at 185-186.

<sup>99</sup> *Ibid.* at 186.

<sup>100</sup> Pragnell, *supra*, note 17 at 44.

<sup>101</sup> *Act no 1866, supra*, note 1.

measure.<sup>102</sup> Nonetheless, it can be argued that improving the profile of Greek television via the production of good quality programmes, maintaining and promoting the Greek language and culture and enabling the country to obtain a distinctive position in the European television broadcasting market is a national responsibility which should be borne by all taxpayers.<sup>103</sup> Finally, funds can be derived from donations by individuals and companies. That will depend on the Fund's success or not in achieving its goal.

Lastly, the Fund's independence from the government must be guaranteed in order to avoid economic scandals.<sup>104</sup> Therefore, the government should abstain from any direct administrative participation in the Fund. The Fund should be administered by a board of governors comprised of academics, personalities of letters, arts, science and technology, communication specialists and artists, who will be elected by their own organisations and formally only appointed by the government. The chairman will be elected by and among the governors. Specialists or executives of broadcasting organisations can become members of the board of governors since broadcasters do not have access to the fund for in-house productions.<sup>105</sup> Staff of the television production industry, no matter how knowledgeable, and representatives of the government and other political parties should be excluded from the board of governors.

In closing, I would suggest sponsorship as another form of funding for the same programmes that will be financed by the Fund. The Dutch Media Act, for example, enables sponsoring on radio and television as a measure to promote cultural programming.<sup>106</sup> Sponsored television programmes, however, must fulfil certain

---

<sup>102</sup> *Supra*, note 35 at 138.

<sup>103</sup> *Supra*, note 15 at 299.

<sup>104</sup> *Supra*, note 73 at 187.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Supra*, note 91.



requirements set out in Article 17(1) of the EC Directive and Article 8(1) of the Greek Presidential Decree 236/1992<sup>107</sup>, which has literally implemented the Directive's provision. In particular, Article 17(1) of the Directive states as follows:

"Sponsored television programmes shall meet the following requirements:

- a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;
- c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services".

In addition, "television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by Article 13 or 14",<sup>108</sup> namely medical products and medical treatment available only on prescription and cigarettes and other tobacco products.

## **SECTION F: The Role of the NCRT**

The proposed policy for the Greek television makes the role of the National Council of Radio and Television (NCRT) more significant. The NCRT will undertake the task of supervising the implementation of the Greek television broadcasting policy's objectives and, in particular, the public and private broadcasters' compliance with their obligations. The NCRT will determine the production expenditure obligations and the

---

<sup>107</sup> *Presidential Decree no 236, supra, note 24.*

<sup>108</sup> *Supra, note 5, art. 17(2). Presidential Decree no 236, supra, note 24, art. 8(2).*

system of licence fee to which the private broadcasters will be subject. In general, the NCRT should apply to private broadcasters and supervise the alternative proposals concerning the regulation of their activities.

Consequently, it is essential that the NCRT be restructured and organized as a powerful and truly independent public authority. In particular, firstly, the NCRT should acquire the right not simply to give its (non-binding) opinion for the grant of a licence but decide itself, and without any governmental intervention, about the grant, renewal, suspension or revocation of a licence. In addition, the contract which, according to the law, a private broadcaster has to conclude with the Greek government should be concluded with the NCRT. The NCRT will negotiate and come to an agreement with the broadcaster and will draft the contract setting out the broadcaster's obligations and the conditions of the channel's operation. In other words, all the jurisdiction which the law now provides for the Minister of the Government Presidency (and other Ministers) should be transferred to the NCRT, whose decisions will be binding and will be challenged in the Greek courts. The Minister will be divested of all authority but the formal appointment of the NCRT members. Secondly, since the NCRT has been entrusted and should be entrusted (according to our proposals) with many and significant responsibilities, its membership should be expanded and composed of persons who have been distinguished in sciences, arts and journalism, have special knowledge and experience in television activities and can work in the NCRT full time. Persons who cannot work full time but whose contribution to the NCRT's tasks is deemed significant can be part-time members.<sup>109</sup> It is important that all members have the knowledge and the experience which is necessary for the fulfilment of the NCRT's work. We believe that none of the members of the NCRT should be a representative of a political party. Television should be dissociated from politics and any influence of the political parties and be seen mostly as a means of cultural mission. The members of the NCRT will be

---

<sup>109</sup> The Canadian Radio-Television Telecommunications Commission (CRTC) consists of full-time and part-time members pursuant to s. 76 of the Canadian Broadcasting Act (*Supra*, note 16).

elected by the organizations or groups they belong to and only formally appointed by the Minister of the Government Presidency. Moreover, following the Canadian example,<sup>110</sup> the NCRT can establish regional offices. These offices would consist of full-time members of the NCRT who would reside in the region they are in charge of. They would exercise the "state control", would grant, renew, suspend or revoke licences, impose sanctions and in general would have full jurisdiction over the local television stations of their region. However, regulations would be enacted following the decision of all (full-time and part-time) the members of the NCRT and would apply equally to both national and local stations, that is to say, regional offices would not have a separate regulative power. The aim is to achieve uniformity of principles and obligations, which would be respected by all television stations. The rationale for the establishment of regional offices is that the NCRT would, in this way, be closer to regional needs and concerns, develop a greater regional sensitivity and make contacts with broadcasters and interest groups in all the parts of the country on a continuing basis<sup>111</sup>. Thirdly, according to the Greek law<sup>112</sup> the NCRT has the authority to legislate codes of ethics for programmes. Therefore, it is entitled to intervene with respect to the content of the programmes and to request channels to transmit cultural content programmes and show concern for the protection of the Greek language. The protection of the national culture and language must be regarded as a very important responsibility of the NCRT. The preservation and dissemination of the Greek culture and language is one of the objectives of the proposed Greek broadcasting policy the implementation of which the NCRT will undertake to supervise. Thus, it should act dynamically and with determination by enacting regulations and strictly controlling their implementation by all television channels. Finally, at this point, we should highlight again the necessity that the

---

<sup>110</sup> *Supra*, note 16, ss. 78 and 79. S. 78 makes a reference to the establishment of regional offices as a possible direction given by the Governor in Council to the CRTC. S. 79 states that if a regional office of the Commission is established, a full-time member of the Commission designated by the Governor in Council will reside in the region.)

<sup>111</sup> S. Scott, "The New Broadcasting Act: An Analysis" (1990-91) 1 M.C.L. R. 25 at 29.

<sup>112</sup> *Act no 1866, supra*, note 1 art. 3(2). (Discussed in chapter 1).

government change its mentality about the role of television and that the members of the NCRT be open-minded, objective, professionals and work hard only in the interest of Greek television.

## **SECTION G: Conclusion**

The promotion of programming diversity and quality, the maintenance and propagation of the national culture and language and the compliance with the "Television Without Frontiers" EC Directive should be the main objectives of a Greek television broadcasting policy. With respect to the implementation of these objectives, different mandates should be given to public and private broadcasters. Public national channels, ET-1 and ET-2, apart from their obligation to abide by the provisions of the EC Directive, should be rendered more independent from Government and entrusted with the task of promoting programme diversity and quality as well as preserving and disseminating national culture and language. Their programmes should not only inform and entertain but also educate the public and raise its cultural level, reflect on the Greek life-style, ideas and values, present national and other European cultural broadcasts and, thus, contribute to the maintenance of European cultural diversity. Television should not be seen as a means of propaganda but as a means of cultural mission. The strengthening and support of the public broadcaster should be the cornerstone of that policy since private broadcasters, driven by profit maximization, prefer programmes which raise audience ratings and, therefore, attract more advertisers, namely, entertainment programmes and not cultural and educational broadcasts. The public broadcaster should also be subject to quotas for Greek language audiovisual works and other European audiovisual works during high viewing hours as well as on the basis of the total annual time devoted to the broadcasting of audiovisual works. As regards private broadcasters, since they constitute a large part of the Greek broadcasting system and constantly attract high percentages of home-viewers (especially the two most popular channels, Mega Channel and Antenna), they should not be left completely free but should contribute to the fulfilment of the national objectives via the imposition of quotas and/or of production

expenditure requirements for Greek language audiovisual works and other European audiovisual works (if they operate nation-wide networks). It is important to reemphasize that a policy favouring Greek language audiovisual works can and must be consistent with the European Directive favouring European audiovisual works and, in particular, opportunities for co-production. The licensing of specialty services is also suggested as a means of achieving diversity. In case of non-compliance with the above obligations, private broadcasters will have to pay a licence fee which will be used for the funding of certain productions. In other words, private broadcasters are not expected to promote programme diversity and quality nor to protect, maintain and disseminate the national culture. It is hoped, however, that a diversified, qualitatively better and attractive programme schedule of the public broadcaster will increase its audience share and, thus, force private broadcasters to raise the quality of their own programmes and perhaps diversify their programme schedule as well. Furthermore, in order to assist public and private broadcasters to fulfil their mandates and the country to obtain a satisfactory position in the larger European broadcasting market, the institution of an independent Broadcast Fund and the encouragement of sponsorship were suggested for the funding of Greek language audiovisual works, national cultural programmes produced in the languages of any other Member State, and co-productions. Finally, it is believed that a more powerful and truly independent NCRT is needed for the realization of the proposed broadcasting policy and for the ending of the political interference.

## GENERAL CONCLUSION

Although Greece, within the European Community, is a small country with a low production capacity and a limited linguistic area, it can create a strong image in the field of television broadcasting and hold a prominent position in the European broadcasting market. This can be achieved without sacrificing Greece's culture and language. In order to accomplish this goal, Greece should reevaluate the role that television can play in society and especially in its cultural field, setting out goals the accomplishment of which will assist the country to make its presence noticeable in the European broadcasting market at the same time as maintaining and promoting its culture and language.

In the present thesis it is proposed that these goals should be the following: firstly, the improvement of the programmes' qualitative level. High quality broadcasts should cease being an exception but fill the largest part of the channels' programme schedule; secondly, the promotion of diversity. Television should not only entertain but also inform, educate, raise the intellectual level of people and be a "window" to their national culture as well as to the culture of other European (at least) countries; thirdly, the EC Directive's quota requirement should be complied with at the same time as preserving and promoting the national culture and language. The funding of Greek language productions and, in particular, of drama, national and non-national cultural broadcasts, as well as the funding of co-productions is hoped to assist the public broadcaster and to provide private broadcasters with an intention to transmit more Greek language audiovisual works and Greek content programming so as to diversify their programme schedule and to include more European productions (at least co-productions) in their broadcasting schedule. It will also help Greece to increase the amount of its national production and Greek content programming, to protect its language and culture, to have a satisfactory participation in the European broadcasting market and to contribute to the maintenance of the European cultures. Since private broadcasters operate according to the demands of the market and to profit maximization, it is inevitable that

the public broadcaster will have the principal role in carrying out the above goals.

Greece still has the opportunity to set out a Greek content policy in television broadcasting with the purpose of protecting and promoting the national culture and language while fulfilling simultaneously the country's obligations towards the European Community. It only requires awareness, determination, the willingness to reform the image of Greek television and hard work.

## BIBLIOGRAPHY

## I. Books and Articles

Acheson, Keith, and Christopher Maule. "Canadian Content Rules: A Time for Reconsideration." *Canadian Public Policy* 16.3 (1990): 284-297.

Alivisatos, Nikos, K. *Kratos Kai Radiotileorasi. I Thesmiki Diastasi*. Athens-Komotini: A. Sakkoula Publications, 1986.

Anderson, L. *Canadian Content Laws and Programming Diversity*. Unpublished paper. Carleton University, 1990.

"L' Avenir de la Télé Canadienne est dans le Contenu Canadien. Affirment les Diffuseurs." [Montreal] *La Presse* 3 Aug. 1989: A14.

Berlin, Barry. *The American Trojan Horse. US Television Confronts Canadian Economic and Cultural Nationalism*. New York: Greenwood Press, 1990.

Blumler, Jay G., ed. *Television and the Public Interest; Vulnerable Values in West European Broadcasting*. London-New Delhi: Sage Publications, 1992.

Brealey, Mark, and Conor Quigley. *Completing the Internal Market of the European Community*. London: Graham and Trotman, 1989.

Bonder, Todd. "A 'Better' Market Approach to Broadcast Regulation." *Federal Communications Law Journal* 36.1 (1986): 27-68.

Canadian Broadcasting Corporation. *The Strategy of the CBC*. Ottawa: CBC, 1983.

Carter, George N. *Istorika tis Tileorasis*. Athens: Techniki Ecologi Publications, 1979.



Clow, Michael. "Profit versus Culture." *Policy Options* 8.2 (March 1987): 37-38.

Collins, Richard. "Broadcasting - The United Kingdom and Europe in the 1990's." *Rundfunk und Fernsehen* 37 (1989): 251-263.

---. *Culture, Communication, and National Identity: The Case of Canadian Television*. Buffalo: University of Toronto Press, 1990.

Commission of the European Communities. *TV Broadcasting in Europe and the New Technologies*. Brussels: Office for Official Publications of the European Communities, 1988.

---. *The European Community Policy in the Audiovisual Field*. Brussels - Luxembourg: Office for Official Publications of the European Communities, 1990.

---. "Television Without Frontiers" Directive. Memo No. 48. Brussels, 4 October 1991.

---. Press Release 1 P (91) 803. "Jean Dondelinger Addresses the Summer Communications University. Carcans-Maubuission, 27 August 1991." (27 August 1991).

Comptois, Louise. *Does Quebec Need Special Status in Broadcasting? A Study of the Federal Inquiries, the Quebec Industry and CRTC Policy on Ownership Transfer*. Unpublished paper. York University, 1987.

Coraei, Christine. "Politiki Thiella apo ton Apoklismo." *Eleftherotipia* 24 July 1993: 3.

Council of Europe - Directorate of Human Rights. *Explanatory Report on the European Convention on Transfrontier Television*. Strasbourg: Council of Europe, Publishing and Documentation Service, 1990.

---. *The Future of Television in Europe*. Strasbourg: Council of Europe, Publications and Documents Division, 1988.

Creery, T. "More State Intrusion? New Broadcast Act Expands Government Powers." *Content* (Jan-Feb 1990): 14-15.

*Cultures in Collision. The Interaction of Canadian and U.S. Television Broadcast Policies.* Canadian - U.S. Conference on Communications Policy. New York: Praeger, 1983.

Dagtoglou, P.D. *Radio-Tileorasi Kai Sydagma.* Athens: A.N. Sakkoula Publications, 1989.

---. *Radio-Tileorasi Kai Sydagma.* Athens-Komotini: A.N. Sakkoula Publications, 1990.

Denniston, Lyle. "Double Header: Do Quotas Mean Diverse Programs?" *The American Lawyer* 12 (1990): 84-85.

Diamadakou, Popi. "Ei Paramorphoseis tis TV." *Kathemerini* 28 Feb. 1993: 24.

Doulkeri, Tessa. "To Nomothetiko Plaisio tis Radiotileorasis stin Ellada." *Armenopoulos* 42 (1988): 1067-1076.

---. *Radiophonia Tileorasi. Nomika Kai Kinonika Provlimata tous.* Athens: Papazisi Publications, 1979.

"Dutch Broadcasting and Culture." *Hilversummary* 4 Dec. 1991: 4-5. (Published by Radio Netherlands International and Netherlands Broadcasting Corporation).

"Elliniki Tileorasi: To Diskolo Paron Kai to Zofero Mellon." *Adie* 6 June 1986: 26.

The European Institute for the Media. *Towards a European Common Market for Television.* Manchester: The European Institute for the Media, 1987.

"European TV Proposal Stalled." *Broadcasting* 26 June 1987: 54.

"(EU) Television Without Frontiers/Belgium: The European Commission Considers the Attitude of the French Community of Belgium towards TFI Incompatible with the Free Provision of Services and Rules of Competition - Advertising Funds Reserved for Regional Procedures are also Challenged." *Europe* 20 October 1990: 14.

Finkelstein, Marie. "The Charter and the Control of Content in Broadcast Programming" in Neil R. Finkelstein, and B. McLeod Rogers, eds. *Charter Issues in Civil Cases*. Toronto: Carswell, 1988.

Freiman, Mark. "Canadian Content in Private Television: An Innisian Analysis." *University of Toronto Faculty of Law Review* 41.1 (1983): 19-33.

Giffard, C.A. "European Regulation of Transborder Television." *California Western Law Review* 27 (1990): 159-171.

Globerman, Steven. *Cultural Regulation in Canada*. Montreal: The Institute for Research on Public Policy, 1983.

Goldman, Irvin. "Communication and Canadian Identity: A Q-Methodological Study." *Canadian Journal of Communication* 16 (1991): 129-138.

Grafstein, Laurence. "Out of Focus: A Thematic Critique of the Task Force on Broadcasting Policy." *University of Toronto Faculty of Law Review* 46.1 (1988): 271-302.

Greenhouse, Steven. "Europe Reaches TV Compromise; US Officials Fear Protectionism." *New York Times* 4 Oct. 1989: A1.

Guback, Thomas. "1992: Television without Frontiers. What the Quota Really Means." *Television Quarterly* 24.3 (1990): 81-89.

Gudin, Charles-Etienne. "Existe-t-il un Marché Européen de la Télévision? Réglementations Nationales et Droit Communautaire: L'Exemple de la France." *Revue des Affaires Européennes* No. 1 (1990): 25-42.

- Hallman, E.S., and H. Hindley. *Broadcasting in Canada*. Don Mills: General Publishing Co. Limited, 1977.
- Handler, Richard. "Canadian Content and the Nationalism of Applebaum-Hebert." *Canadian Public Policy* 11.4 (1985): 677-683.
- Havard, Sophie. *La Construction d'une Europe Audiovisuelle: L'Adequation des Politiques Menées*. LL.M Thesis. McGill University, 1993.
- Heretakis, Manolis. "I Deisdisi tis TV stin Ellada Kai to Kino tis." *Adie* 6 June 1986: 29-31.
- Hoffmann-Riem, Wolfgang. "National Identity and Cultural Values: Broadcasting Safeguards." *Journal of Broadcasting and Electronic Media* 31.1 (1987): 57-72.
- Hogson, Patricia. "Public Service Values - Passport to the Future." *EBU Review; Programmes, Administration Law* XL. 3 (May 1989): 17-20.
- Hondius, Frits. "Regulating Transfrontier Television - The Strasbourg Option." *Yearbook of European Law* 8 (1988): 141-169.
- Hoskins, Colin, and Stuart McFadyen. "The Canadian Broadcast Program Development Fund: An Evaluation and some Recommendations." *Canadian Public Policy* 12.1 (1986): 227-235.
- . "Television in the New Broadcasting Environment: Public Policy Lessons from the Canadian Experience". *European Journal of Communication* 4 (1989): 173-189.
- "I Idiotiki Tileorasi Efthase Kai stin Ellada." *Adie* 6 June 1986: 27-28.
- "Important Changes to the Dutch Media Act." Hilversumsummary 3 Sept. 1991: 2-4.

Ioannou, K., and C. Calavros. *Greek Broadcasting Law and Community Law (A first Approach)*. Athens-Komotini: A.N. Sakkoula Publications, 1984.

Janisch, Hudson N. *Aid for Sisyphus: Incentives and Canadian Content Regulation*. (A discussion paper prepared for the Conference on "The Power of the Purse: Financial Incentives as Regulatory Instruments"). University of Calgary, October 12-13, 1990, [unpublished].

Jurgens, Eric. "The Netherlands: A Small Cultural Community as a Potential Victim of International Media Conglomerates." *Rundfunk und Fernsehen* 37 (1989): 264-269.

"Kai Optikoacoustiki Ebloki IPA - Europis." [Montreal] *Ellinikos Tahidromos* 26 Nov. 1992: 4.

Katsoudas, Dimitrios. "Greece: A Politically Controlled State Monopoly Broadcasting System." *West European Politics* 8.2 (1985): 137-151.

Kiki, Joanna. "Greek Broadcasting Law: Past and Present." *Journal of Media Law and Practice* 10.1 (1989): 24-27.

Kouloglou, S. "To Syndromo tis 'Ideologikis Dropis'." *Adie* 6 June 1986: 36-37.

Krippas, George. *To Nomothetiko kathestos tis Radioteleoptikis Epichirisis*. Athens: Sakkoula Publications, 1990.

Labat, Terry Smith. "A view of the Single Market: Trade in Services in EC' 92." *Case Western Reserve Journal of International Law* 22 (1990): 283-292.

Lange, André, and Jean-Luc Renaud. *The Future of the European Audiovisual Industry*. Manchester: The European Institute for the Media, 1989.

- Lapointe, Alain, and Jean-Pierre Le Goff. "Canadian Television: An Alternative to Caplan-Sauvageau." *Canadian Public Policy* 14.3 (1988): 245-253.
- Lazos, Christos. "Programmatismos Kai Exousia stin Elliniki Tileorasi: To Avevaion Mellon ton Kratikon Kanalion." *Adie* 6 June 1986: 32-35.
- Lohr, Steve. "European TV's Vast Growth: Cultural Effect Stirs Concern." *New York Times*, 16 March 1989: A1.
- Lupinacci, Timothy M. "The Pursuit of Television Broadcasting Activities in the European Community: Cultural Preservation or Economic Protectionism?" *Vanderbilt Journal of Transnational Law* 24.1 (1991): 113-154.
- Maggiore, Matteo. *Audiovisual Production in the Single Market*. Brussels: Commission of the European Communities, 1990.
- Manthoulis, Roviros. *To Kratos tis Tileorasis*. Athens: Themelio Publications, 1981.
- McCormack, T. "Culture and the State." *Canadian Public Policy* 10.3 (1984): 267-277.
- McPhail, Thomas L., and Brenda M. McPhail. *Communication: The Canadian Experience*. Toronto: Copp Clark Pitman Ltd., 1990.
- McQueen, David. "Alternative Scenarios in Broadcasting." *Canadian Public Policy* 9.1 (1983): 129-134.
- Meisel, John. "Escaping Extinction: Cultural Defence of an Undefended Border." *Canadian Journal of Political and Social Theory* 10.1-2 (1986): 248-265.
- Moore, Charles, and David St. John White. "European Television in the 1990s: Tuning Out American Producers?" *The Entertainment and Sports Lawyer* 8 (1990): 1-12.

- Morgan, Simon. "European Television-Broadcasting in the 1990s." *International Media Law* 7.11 (1989): 90-91, 94-95.
- Morrow, Charles. "Developments in European Telecommunications Law and Policy." *Columbia Journal of Transnational Law* 24 (1985): 165-169.
- Negrine, R., and S. Papathanassopoulos. *The Internationalization of Television*. London-New York: Pinter Publishers, 1990.
- The Netherlands. Ministry of Welfare, Health and Cultural Affairs. *Broadcasting*. Fact Sheet C-10-E 1992.
- Noam, Eli. *Television in Europe*. New York-Oxford: Oxford University Press, 1991.
- Nordenstreng, K., and H.I. Schiller, eds. *National Sovereignty and International Communication*. Norwood-New Jersey: Ablex Publishing Corporation, 1979.
- Northcote, William L. "The Treatment of Culture and Cultural Industries Under the Canada - U.S. Free Trade Agreement and in the European Community". *M.C.L.R* 2 (1992): 27-55.
- Nowell-Smith, Geoffrey, ed. *The European Experience*. London: British Film Institute Publishing, 1989.
- Orf, Ewald. "Television Without Frontiers - Myth or Reality?" *European Intellectual Property Review* 12 (1990): 270-274.
- Panayote, Dimitras, and Tessa Doukeri. "Electronic Media Policy in Greece." *Electronic Media and Politics in Europe* (1986): 135-147.
- Papathanassopoulos, Stylianos. "Greece: Nothing is More Permanent than the Provisional." *Intermedia* 17.2 (1989): 29-35.

- . "The Greeks Throw Caution to the Wind." *Television Business International* (March 1990): 20.
  - . "Stin Hora opou Anthi ei Fedra Portokalea." *Kathemerini* 30 Aug. 1992: 41.
  - . "Me Vima Argo ei Anaptyxi tis Tileorasis stin Ellada." *Kathemerini* 30 Aug. 1992: 41.
  - . "Greek Politics Strangle Process." *Television Business International* (July/August 1989): 14.
- Paquet, G. "Multiculturalism as National Policy." *Journal of Cultural Economics* 13 (1989): 17-34.
- Paterson, D.G., and G. Rosenbluth. "Culture, Myth, and Fetish." *Canadian Public Policy* 9.1 (1983): 134-137.
- Pearson, P. "Without a Vision of Canadian Culture, the Nation's Centre Cannot Hold." *[Montreal] Gazette* 6 July 1991: E6.
- Peck, N.C.M. "Transfrontier Television and Europe 1992: A Common Position?" *Temple International and Comparative Law Journal* 4.2 (Fall 1990): 307-365.
- Pineau, Guy. "L' Europe Audiovisuelle de L' Après-Directive." *Les Dossiers de l'Audiovisuelle* No. 35 (1991): 10-12.
- Pragnell, Antony. *Television in Europe. Quality and Values in a Time of Change*. Manchester: The European Institute for the Media, 1985.
- Presburger, Paul, and M.R. Tyler. "Television Without Frontiers: Opportunity and Debate Created by the New European Community Directive." *Hastings International and Comparative Law Review* 13 (1990): 495-509.
- Quester, George H. *The International Politics of Television*. Massachussets-Toronto: D.C. Heath and Company, 1990.



- . "Sorting the Issues of Cultural Sovereignty: The Canadian Example." *Crossroads* 26 (1987): 53-74.

Raboy, Marc. *Missed Opportunities. The Story of Canada's Broadcasting Policy*. Montreal-Kingston: McGill-Queen's University Press, 1990.

- . "From Cultural Diversity to Social Equality: The Democratic Trials of Canadian Broadcasting." *Studies of Broadcasting* (1990): 7-41.

*Radio and Television in France*. London: French Embassy - Press and information Service, 1991.

Rapp-Jaletzke, Sybille M. *Broadcasting in Canada and its Influence on the Canadian Identity*. LL.M Thesis. McGill University, 1991.

Rebelo De Sousa, Marcello. "Portugal. Le Droit de l' Audiovisuel." *Revue Francaise de Droit Administratif* 5.3 (May-June 1989): 513-515.

"Rewriting the Communications Rules in Canada". *Broadcasting* 16 Jan. 1993: 102-104.

Rokas, Constantinos. *Eisigiseis tou Eborikou Dikaiou*. Athens: A. Sakkoula Publications, 1972.

Ross, Brian L. "'I Love Lucy'", but the European Community Doesn't: Apparent Protectionism in the European Community's Broadcast Market." *Brooklyn Journal of International Law* 16 (1990): 529-560.

Sahpekidou, Eugenia R. *Eleftheri Kikloforia Tileoptikon Ipiresion stin Europaiiki Iconomiki Kinotita*. Thessaloniki: Sakkoula Publications, 1990.

Salvatore, Vincenzo. "Quotas on TV Programmes and EEC Law." *Common Market Law Review* 29.5 (1992): 967-990.

- Sarris, Neoklis. *Elliniki Kinonia Kai Tileorasi*. Athens: Gordios Publications, 1992.
- Schwartz, Ivo E. "Broadcasting and the EEC Treaty." *European law Review* 11 (March 1986): 7-60.
- Schwartz, Suzanne M. "Television Without Frontiers?" *North Carolina Journal of International Law and Commercial Regulation* 16 (Fall 1991): 351-378.
- Scott, Sheridan. "The New Broadcasting Act: An Analysis." *Media and Communications Law Review* 1 (1990-91): 25-58.
- Shaughnessy, Haydn, and C.F. Cobo. *The Cultural Obligations of Broadcasting*. Manchester: The European Institute for the Media, 1990.
- Shedd, M.S., Elizabeth A. Wilman and R. Douglas Burch. "An Economic Analysis of Canadian Content Regulations and a New Proposal." *Canadian Public Policy* 16.1 (1990): 60-72.
- Siune, Karen. "Continued Scope for a National Communications Framework in Denmark." *Rundfunk und Fernsehen* 37 (1989): 270-275.
- Sklavos, Paul. "Kratiki Radiotileorasi, Thesmiko Plaisio, Programmatismos. Programma Kai Kratiki Radiophoniki Stathmi." Address to the B' Pan-Hellenic Conference on the Mass Media. Athens, 17 June 1993.
- Spiliotopoulos, Epaminondas P. *Deikitiko Dikaio*. Athens-Komotini: A.N. Sakkoula Publications, 1986.
- . "Grèce. Le Droit de l' Audiovisuel." *Revue Française de Droit Administratif* 5.3 (1989): 499-502.
- Spyridis, S.E. *Skepseis Kai Schedia Giro apon tin Elliniki Tileorasi*. Athens: Privately printed, 1976.

"Stathera Proto to Mega: Miothikai Ki Allo to Pososto tis ET-1" *Kathemerini* 27 Aug. 1992: 13.

Stenbaek, Marianne. "The Politics of Cultural Survival: Towards a Model of Indigenous Television." *American Review of Canadian Studies* 18.3 (1988): 331-340.

Telefilm Canada. *Canadian Broadcast Program Development Fund. Policies 1992-93*. Montreal: Telefilm Canada, 1992.

"Teleftaii stin Tileorasi." *Ethnos* 26 Mar. 1993: 8.

Ulrich, Hans, and Jessurum D'Oliveira, eds. *Netherlands Reports to the XI<sup>th</sup> International Congress of Comparative Law Caracas 1982*. Deventer: Kluwer Law and Taxation Publishers, 1982.

Van Empel, M. et al., eds. *Leading Cases on the Law of the European Communities*. Fifth ed. Deventer: Kluwer Law and Taxation Publishers, 1990.

Venizelos, Evangelos B. *I Radiotileopriki Ecrxi. Sydagmatika Plaisia Kai Nomothetikes Epiloges*. Thessaloniki: Paratiritis Publications, 1989.

Vgontzas, A. Address. B' Pan-Hellenic Conference on the Mass Media. Athens, 17 June 1993.

Wallace, Rebecca, and D. Goldberg. "The EEC Directive on Television Broadcasting." *Yearbook of European Law* 9 (1989): 175-196.

---. "Television Broadcasting: The Community's Response." *Common Market Law Review* 26 (1989): 717-728.

Wilkins, Kelly L. "Television Without Frontiers: An EEC Broadcasting Premiere." *Boston College International and Comparative Law Review* (Winter 1991): 195-211.

Wingard, Dovie F. "Europe 1992: Mass Media Developments." *New York Law Journal* 204.105 (1990): 5 col 1.

Winter, Audrey et al., eds. *Europe Without Frontiers: A Lawyer's Guide*. BNA Special Projects Unit, 1989.

Wylie, Andrée. "A New Broadcasting Act: A New Dial or Fine-Tuning?" *Canadian Competition Policy Record* 9.3 (1988): 14-18.

Zapholia, Efi. "Kanali Syndromiton. 'Videoclub' Polytelias." *TV Zaping* 17 April 1992, no 5, 35.

Zeres, Persephony. "Tileorasi Horis Synora." *Nomiko Vema* 37 (1989): 692-704.

## II. Documents

### GREECE

Manesis, A.I., and G. Papademetriou. *To Sydagma tou 1975/86*. Athens-Komotini: A.N. Sakkoula Publications, 1986 (The Greek Constitution).

*Act no 2312 of 10/11 March 1953*, (1953) Code of Nomiko Vema, 113.

*Act no 3188 of 13/21 April 1955*, (1955) Code of Nomiko Vema, 281.

*Legislative Decree no 3778 of 11/12 October 1957*, (1957) Code of Nomiko Vema, 508.

*Legislative Decree no 722*, Hellenic Kingdom Gazette, 24 November 1970, Fasc. A, No. 252.

*Legislative Decree no 745*, Hellenic Kingdom Gazette, 10 December 1970, Fasc. A, No. 265.

*Legislative Decree no 352 of 22/22.3.1974*, (1974) Code of Nomiko Vema, 173.

*Presidential Decree no 300*, Hellenic Republic Gazette, 30 April 1974, Fasc. A, No. 114.

*Act no 230*, Hellenic Republic Gazette, 3 December 1975, Fasc. A, No. 272.

*Act no 1288*, Hellenic Republic Gazette, 1 October 1982, Fasc. A, No. 120.

*Act no 1730*, Hellenic Republic Gazette, 18 August 1987, Fasc. A, No. 145.

*Act no 1866*, Hellenic Republic Gazette, 6 October 1989, Fasc. A, No. 222.

*Presidential Decree no 573*, Hellenic Republic Gazette, 8 December 1989, Fasc. A, No. 244.

*Act no 1943*, Hellenic Republic Gazette, 11 April 1991, Fasc. A, No. 50.

*Regulation no 2/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 21 June 1991, Fasc. B, No. 421.

*Regulation no 3/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 18 July 1991, Fasc. B, No. 538.

*Regulation no 5/1991 of the National Council of Radio and Television*, Hellenic Republic Gazette, 18 December 1991, Fasc. B, No. 1018.

*Presidential Decree no 236*, Hellenic Republic Gazette, 16 July 1992, Fasc. A, No. 124.

*Proposing Report on the Bill: "The Establishment of a National Council of Radio and Television and the Grant Licences for the Installation and Operation of Television Stations"*, Greek Parliament - Parliament Archives, Period E, Session A: From 3-7-1989 to 12-10-1989.

Greek Radio-Television (ERT) - Office of Television - Vice-Office of Programmes, Reports of 1985 and 1986.

### ECC

*Treaty Establishing the European Economic Community*, 25 March 1957, 298 U.N.T.S. 11 (1958).

*Television Without Frontiers. Green Paper on the establishment of the Common Market for broadcasting, especially by satellite and cable*, COM (84) 300 final/2.

*Resolution embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Regulation on a Community aid scheme for non-documentary cinema and television coproductions.* O.J. Eur. Comm. (No. C 288) 30 (1985).

*Council Directive No. 552 of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.* O.J. Eur. Comm. (No. L 298) 23 (1989).

Commission of the European Communities. *Suggested Guidelines for the Monitoring of the "TV Without Frontiers" Directive.* Amended Version 15.2.1993.

*Joint Declaration on Audiovisual EUREKA* (in Commission of the European Communities. *The European Community Policy in the Audiovisual Field*, see part I of the bibliography (Books and Articles)).

Bull. EC 4-1987; A Fresh Boost for Culture in the European Communities.

*Commission Communication to the Council accompanied by two proposals for Council Decisions relating to an Action Programme to Promote the Development of the European Audiovisual Industry "MEDIA" 1991-1995.* COM (90) 132 final.

*Council Decision No. 685 of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995).* O.J. Eur. Comm. (No. L 380) 37 (1990).

## COUNCIL OF EUROPE

*European Convention on Transfrontier Television*, 14 Annals of Air and Space Law (1989), 577.

## FRANCE

*Décret no 90-66 du 17 janvier 1990*, J.O., 18 Janvier 1990, 757.

*Décret no 90-67 du 17 janvier 1990*, J.O., 18 Janvier 1990, 759.

*Décret no 92-279 du 27 mars 1992*, J.O., 28 Mars 1992, 75.

*Décret no 92-281 du 27 mars 1992*, J.O., 28 Mars 1992, 75.

## CANADA

*An Act Respecting Broadcasting and to Amend Certain Acts in Relation thereto and in Relation to Radiocommunication*, S.C. 1991, c.11.

*CRTC, Public Notice CRTC 1984-94*, Ottawa, 15 April 1984.

*CRTC, Public Notice CRTC 1987-8*, Ottawa, 9 January 1987.

*CRTC, Public Notice CRTC 1987-28*, Ottawa, 30 January 1987.

*CRTC, Public Notice CRTC 1988-105*, Ottawa, 27 June 1988.

*CRTC, Public Notice CRTC 1989-27*, Ottawa, 6 April 1989.

### III. Other Sources

AGB Hellas. Systems of Market Information. *Statistics on TV Viewers' Preferences and on Channels' Audience Share*, 1992.

ERT-AE's Accounts Office. *Reports on ERT-AE's Sources of Financing*, 1993.

MEDIA SERVICES S.A. *Data on Channels' Daily Programme Schedule and on Audience Share*, 1993

TV Guide:   TV Zaping of 17 April 1992, no 5.  
               TV Zaping of 12 March 1993, no 52.  
               TV Zaping of 19 March 1993, no 53.  
               TV Zaping of 17 September 1993, no 79.

## APPENDIX

The English translation of Article 4 of French Decree 92-279 of 27 March 1992.

Art. 4. - Article 6 of the Decree of 17 January 1990 is replaced by the following dispositions:

"Art.6. - I - European cinematographic or audiovisual works constitute:

- a) the works originating in the Member-States of the European Economic Community;
- b) the works of European third States party to the European Convention on Transfrontier-Television of the Council of Europe, which meet the following conditions:

- 1. On the other hand, they must be essentially produced with the participation of authors, actors, and technicians residing in one or more of those States and with the assistance of technical services which are provided in film studios, laboratories or sound studios situated in the same States;

- 2. On the other hand, they must:

- a) either be produced by an enterprise whose head office is located in one of the above mentioned States and whose president, director or managing director as well as a majority of the board members are citizens of one of those States, under the condition that this enterprise supervises and effectively controls the production of those works by being in charge of, or sharing jointly in the initiative and the financial, technical and artistic responsibility for the making of the works and by guaranteeing the good result;
- b) or be, in majority, financed by the contributions of co-producers established in the above mentioned States, under the condition that the co-production is not controlled by one or more producers established outside those States.

The enterprises and co-producers must not be controlled, within the meaning of Article 355-1 of Act no 66-537 of 24 July 1966, by one or more producers established outside those States.

II. - In addition, European cinematographic or audiovisual works constitute the works originating in European third States with which the European Economic Community has



concluded an agreement in accordance with the procedures of the Treaty of 25 March 1957, which fulfil the following conditions:

1. On the other hand, they must be essentially produced with the participation of authors, actors, technicians residing in or more of those States or of the States referred to in paragraph I and with the assistance of technical services provided in film studios, laboratories or sound studios located in the same States;

2. On the other hand, they must:

a) either be exclusively produced by an enterprise whose head office is situated in one of those third European States and whose president, director or managing director together with the majority of the board members are citizens of one of the same States, under the condition that the enterprise supervises and effectively controls the production of those works by being in charge of, or sharing jointly in the initiative and financial, technical and artistic responsibility for the making of the works and by guaranteeing the good result;

b) or be co-produced by an enterprise, which fulfils the above mentioned conditions (2 (a)), and one or more co-producers established in the Member States of the European Economic Community.

The enterprises and co-producers must not be controlled, within the meaning of Article 355-1 of Act no 66-537 of 24 July 1966, by one or more producers established outside those European third States or the States referred to in paragraph I.

The participation of authors, actors and technicians as well as the provision of technical services which are mentioned in I-1 and II-1 must not be lower than a proportion fixed by a joint decision of the Ministers of Culture and Communication."